FOURTEENTH DAY.

Wilmington, Delaware,
June 25th, 1923, at 8.30 o'clock A. M.,
Standard Time.

Before:
HON. HUGH M. MORRIS, U. S. District Judge.

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. ANDERSON: May it please the Court, on Friday, I think, of last week, we had the cross-examination of Mrs. Wilson, the representative of the Federal Trade Commission. She was asked as to a letter of transmittal of notice of accrued royalties on licenses issued under the direction of the Federal Trade Commission, informing the Alien Property Custodian of such accruals, and counsel asked if she had the letter. She did not at the time. I have this morning a letter dated August 29, 1919, signed by Mrs. Wilson, Chief of Enemy Trade Division, addressed to the Alien Property Custodian, covering one of those transmittals, as a sample of the letter, and I am informed that the letters were substantially of the same form, except with such variations as were necessary owing to the change of facts in each case. I have spoken to Mr. Kresel and he agrees that this letter may be introduced without recalling Mrs. Wilson.

I therefore offer in evidence letter dated August 29, 1919, addressed to the Alien Property Custodian, signed "M. R. Wilson, Chief of Enemy Trade Division," on the letterhead of the Federal Trade Commission; and ask that the same may be admitted, identi-

fied and read in evidence as Plaintiff's Exhibit No. 406.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 406." (*See Exhibits, Vol II, page 761.*)

MR. ANDERSON: By consent of counsel on the other side, I should like to interrupt the cross-examination of Mr. Metz this morning to call Colonel Miller, who is compelled to leave the city for the West today at 10:50, and might not return before the Government close its case. Mr. Kresel has very kindly consented.

MR. KRESEL: No objection.

MR. ANDERSON: I will call Colonel Thomas W. Miller.

THOMAS W. MILLER.

THOMAS W. MILLER, called as a witness on behalf of the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Please state on the record your full name and place of residence?

A. Thomas W. Miller, Wilmington, Delaware.

Q. 2. Do you now hold any official position with respect to the Government of the United States?

A. Alien Property Custodian.

Q. 3. Before you became an officer of the Government, what was your business, Colonel Miller?

A. Most of the time before I accepted this appointment I had been in the service of the Government either in the Army or at Washington in Congress. Previous to that I was a State official; before that a law student; and before that I had been in the manufacturing business away from Delaware.

Q. 4. Were you an officer in the Army in the late war?

A. Yes, sir.

Q. 5. What was your official rank?

A. I came up through the various grades, from enlisted man to Lieutenant Colonel when I was discharged.

Q. 6. When were you in Congress?

A. The Sixty-fourth Congress, from 1915 to 1917.

Q. 7. When were you appointed and when did you qualify as Alien Property Custodian?

A. I was appointed March 12, 1921. I was sworn in March 16, 1921.

Q. 8. You have been discharging the duties of that office since that time?

A. I have.

Q. 9. Colonel Miller, it appears in the record in this case that there were two assignments from the Alien Property Custodian to the Chemical Foundation, Incorporated, as Alien Property Custodian, one dated the 27th day of April, 1921, and the other the 5th day of November, 1921. These instruments are filed as exhibits J and K with the Bill of Complaint and have been introduced in evidence here. You executed those instruments, did you?

A. I did.

Q. 10. I will take up first the assignment of April 27, 1921. At the time that you executed that assignment had you ever seen or read the Charter of The Chemical Foundation, Incorporated?

A. I had not.

Q. 11. You had then been Alien Property Custodian—

A. As to whether I had ever seen it, it may have been in pamphlets in my office, but I had not read it.

Q. 12. You had then been Alien Property Custodian about five or six weeks, had you?

A. Yes, sir.

Q. 13. Had you any personal knowledge of the character of the corporation known as The Chemical Foundation, Incorporated?

MR. KRESEL: Pardon me a minute. I object to that question as being indefinite. I do not know what is meant by "the character of the Chemical Foundation."

THE COURT: I think your objection is well taken.

MR. ANDERSON: I will withdraw the question. I was trying to shorten it.

Q. 14. Will you state all the facts within your own knowledge as to your execution of that order for the assignment of the patents mentioned therein, which are commonly called the Norma Company of America?

MR. KRESEL: I am sorry, Colonel Anderson. But I must object to the indefinite character of that question. This is direct examination.

THE COURT: I think the objection is well taken.

MR. ANDERSON: Colonel Miller has got to leave on a train at 10:50 and I am trying to shorten it. Of course, if there is an objection, I withdraw the question.

Q. 15. Did you have any talk with any of the officers of The Chemical Foundation, Incorporated, Mr. Garvan, Mr. Hoguet or Mr. Choate, prior to the execution of that instrument?

A. Yes, sir.

Q. 16. With whom?

A. Mr. Francis P. Garvan and myself had not met until a fortnight after I was Alien Property Custodian.

MR. KRESEL: Pardon me a minute, Colonel. I ask that that part of the answer be stricken out

as not responsive. The question is with whom he had talked.

THE COURT: Let it be stricken out.

Q. 17. With whom had you talked?

A. May I say, Colonel Anderson, this has nothing to do with the Norma patents.

Q. 18. I will ask you this: Did you have any talk with Mr. Garvan prior to that time?

A. Yes, Mr. Garvan and myself met—

MR. KRESEL: Pardon me a minute, please. Prior to what time, Colonel?

MR. ANDERSON: The assignment. Of course, I am talking about the assignment on the 27th day of April, 1921.

MR. KRESEL: I simply wanted to know which assignment you were talking about.

MR. ANDERSON: I said I was going to discuss the one of the 27th at this time.

A. Mr. Garvan and myself met at my office, as near as I can recollect it, on the last day of March, 1921. It was the first time I had had the pleasure of meeting him.

Q. 19. You had some talk with him at that time?

A. Yes, sir.

Q. 20. Tell as nearly as you can what took place, what was the conversation; that is, what he said and what you said, and what was the subject of discussion?

A. Mr. Garvan called upon me as an act of courtesy to officially turn over the keys and discuss certain affairs relating thereto, as a predecessor would discuss with his successor.

In the course of our conversation, he discussed with me the general subject of the chemical business in the United States, told me of his connection with The Chemical Foundation and indicated to me that The Chemical Foundation would be very glad to have me as a director and as one of their officials.

I can not remember the details of a personal conversation as between us two, but it was along those general lines.

Q. 21. What, if anything, did you then know of The Chemical Foundation?

A. At that time I knew very little about The Chemical Foundation, because it had been wholly divorced from any associations that I had had in connection with the war work. I indicated to Mr. Garvan that naturally I was interested in the matter of American commercial enterprises, and I at that time indicated a degree of acquiescense in the proposition that he put to me.

Q. 22. What proposition did you mean?

A. That I go on the directorate and become an official. I will say right there, if I may be permitted, that the office of Alien Property Custodian is perhaps larger in scope and more versatile than most any other Government department; and when The Chemical Foundation had first come to my attention, I knew Mr. Garvan was President, I considered it, I will say in all candor, as a portion of the duties of the Alien Property Custodian at that time. At that time, now, we are talking of up to March, 1921.

Q. 23. Talking about 1921. Now, in regard to this particular assignment which appears in evidence as an assignment of certain patents or patent rights to the Norma Company of America, do you recall when that matter was first brought to your attention?

A. It was brought to my attention some time in April, 1921, by one of my subordinates, who came to me in the usual routine manner and asked me whether I would be willing—

Mr. Kresel: Just a minute, Colonel. We must object to any conversation between the Colonel and his subordinates as not binding upon the defendant, immaterial and irrelevant.

A. (continued) Well, I will say it this way—

MR. KRESEL: Pardon me a minute, Colonel, The Court has not ruled yet.

THE COURT: Do you or do you not insist upon the answer?

MR. ANDERSON: He has answered the question; it came to his attention, was brought to his attention by one of his subordinates some time in April.

THE COURT: What is your position with respect to the objection taken by Mr. Kresel?

MR. ANDERSON: My position is that I do not desire the conversations between him and his subordinates; but I do think it is important in this case, or, at least, a part of the case presented by the Bill, to show how and when the matter came to his attention, and what he did.

THE COURT: There is no objection to that?

MR. ANDERSON: That part of the answer is not responsive. Colonel Miller was going on to explain; but I have no desire for that.

A. Well, I have not finished it yet, if I may be permitted. Mr. Nones of the Norma Company of America called me in the usual course of business in April, 1921, and indicated his desire to purchase.

MR. KRESEL: One minute. I object to what Mr. Nones' desire was as hearsay and not binding on the defendant.

THE WITNESS: May I put it this way: that an offer—

MR. ANDERSON: One minute, Colonel. If your Honor please, the question here is the circumstances under which this gentleman made this assignment. I do not care for the conversations with Mr. Nones. I only want what instructions he gave and do not care for the conversation.

THE COURT: You do not ask for that?

MR. ANDERSON: Mr. Nones' calling on him has been a fact in the case. That is all, I do not care for the conversation with him at all.

Q. 24. Mr. Nones called on you and the matter was called to your attention by one of the subordinates of your department?

A. Yes.

Q. 25. Those are the two facts. Do you recall executing the assignment of April 27th; do you recall anything about it yourself?

A. It came up to me in the usual routine manner and was signed by me; because I had agreed—

MR. KRESEL: One minute, please.

THE COURT: The objection is well taken.

Q. 26. It came to you in the usual routine manner and was signed by you. At that time had you read the Executive order theretofore issued by Mr. Polk or the Executive order theretofore issued by the President in regard to the sale to The Chemical Foundation, all of which were introduced in evidence?

A. No, sir.

Q. 27. Do you know by whom the matter of this sale to The Chemical Foundation of the patents embraced in this suit was actually handled in your office?

A. This was a corporate management matter.

Q. 28. Do you know what officer of your department handled it?

A. Well, I dealt directly with Mr. Paul Smith, who was my Chief of Corporation management.

Q. 29. Did you at that time know the history of the organization of the defendant Chemical Foundation?

A. Only in a general way.

Q. 30. Did you know at that time of the fact that The Chemical Foundation or the stock of The Chemical Foundation had been subscribed by the members of the American Dyes Institute?

MR. KRESEL: One minute, please. We object to that on the ground it is immaterial and irrelevant as to whether this witness knew that fact or not.

MR. ANDERSON: It is averred affirmatively in the answer, the witness already knew the history and organization of this defendant. The answer avers that the witness was fully informed of and knew the history and organization of this defendant; second, the impelling and inducing motives of its creation; third, its charter and purposes; fourth, the muniments of title; fifth, the considerations given for each and all of the patents and other properties and rights sold, assigned and transferred to it. Those averments are made in the answer as affirmative averments. I have a right to ask the witness if he did know those.

MR. KRESEL: It does not make the slightest bit of difference what is averred in the answer. It is no part of the plaintiff's case, and to the plaintiff's case under the pleadings it is immaterial and irrelevant whether this witness knew at the time when he executed this assignment the fact that is sought to be elicited. If the defendant desires to show that, it is the defendant's duty to show it and not the plaintiff's, but upon the plaintiff's case we say it is immaterial and irrelevant.

MR. ANDERSON: I do not have to recall witnesses in rebuttal where there is an affirmative allegation; I can meet that allegation in the *prima facie* case.

THE COURT: That is part of the judicial discretion involved in the conduct of the trial.

MR. ANDERSON: Certainly.

THE COURT: You may take your answer under the general rule. But you understand, Colonel

Anderson, that if you go into that in chief you must go into it fully and it is not open to you in rebuttal.

MR. ANDERSON: My reason for going into it—

THE COURT: No, I do not care anything about your reasons; but if you go into it in chief you do not have another opportunity to go into it in rebuttal.

MR. ANDERSON: I understand, sir, and in view of the objection, and to save time, because I want to get this witness off, I will withdraw it, stop where I am on that, and perhaps go into it later.

Q. 31. Colonel Miller, it appears here that there was another assignment?

A. Are we all off that April 27th one?

Q. 32. Yes.

A. I must say I had not finished.

THE COURT: You are in the hands of your counsel.

MR. ANDERSON: We will stop there for the moment.

Q. 33. As to the one of the 5th day of November, 1921, which is in evidence, which undertakes to confirm certain sales theretofore made of patents, trademarks, etc.; do you know how this matter first came to your attention?

A. It came in the usual routine way.

MR. KRESEL: Please answer just yes or no.

A. Why, I know, yes.

Q. 34. Please state how it came to you and by whom it was brought to your attention?

MR. KRESEL: I do not object to the question in so far as it asks by whom it was brought to his attention. I do object to the question as to how it came to his attention, as being too indefinite.

THE WITNESS: Can I tell the individual?

THE COURT: Just a minute, Colonel.

Will you divide your question, then, Colonel Anderson, or do you press it as it stands?

MR. ANDERSON: It will probably simplify it if I divide it, so as to save time.

Q. 35. First, I will ask you if you know who brought it to your attention?

A. It was brought to my attention by Mr. Zimmerman, who was chief of my patent section, and Mr. Ewing, who was in the Bureau of Law.

Q. 36. Could you state whether you had at that time ever read the charter of The Chemical Foundation?

A. No, sir.

Q. 37. Could you say whether at that time you were familiar with the orders entered by Mr. Polk and the Executive Order of the President of February 13, 1920?

A. No, sir.

Q. 38. Do you recall what, if anything, was stated to you at the time you signed or authorized this order?

A. I directed it—

MR. KRESEL: Pardon me a moment. Do you mean authorized or signed?

MR. ANDERSON: I withdraw the word "authorized."

Q. 39. At the time you signed this order or when it was brought to you?

A. This order came to me—

MR. KRESEL: Please answer yes or no.

A. State that question again, please.

(Q. 38 repeated as above recorded.)

A. Yes, I recall it.

Q. 39a. Can you please state what was said to you on the subject by Mr. Zimmerman?

MR. KRESEL: I object to the question upon the

ground that the defendant cannot be bound by any conversation between this witness and his subordinate, Mr. Zimmerman.

MR. ANDERSON: I do not deny that the defendant can not be bound, but I do respectfully suggest that the witness can state the circumstances under which he executed this order, for the knowledge of the Court. I will further show in this case that Mr. Zimmerman is now and has been long since an employee of The Chemical Foundation; and, therefore, I must rely upon this witness.

MR. KRESEL: Of course, the latter fact, can have no effect upon the question that is pending. The fact that Mr. Zimmerman is said to be in the employ of The Chemical Foundation, it seems to me, has no bearing upon the question as to whether this particular question is open to objection or not. Colonel Anderson concedes that the conversation between Colonel Miller and Mr. Zimmerman can in no way bind the defendant; and if that is so, it is immaterial and irrelevant, and we object to it.

THE COURT: Have you anything further to say, Colonel Anderson?

MR. ANDERSON: No, sir.

THE COURT: I think the objection is well taken, but you may put your answer of record if you desire, under our general rule.

Q. 39b. (continuing) Please answer the question, Colonel Miller?

A. I had given instructions to have these records brought up to date, it really being a routine arrangement, in order to clear the titles and to enable American users of these trade-marks to obtain them from The Chemical Foundation properly.

MR. KRESEL: Just a minute please. I did not

interrupt Colonel Miller because I felt that perhaps he would get on to the conversation. He has been asked about a conversation. The answer up to the present has not stated a word of the conversation.

THE COURT: Let the answer be stricken out and the question repeated.

Q. 40. What were the representations to you as to the situation that brought about this order?

MR. KRESEL: I object to the question in that form.

THE COURT: The objection is sustained. Let the prior question be repeated, unless it is withdrawn, Colonel Anderson.

A. I can not give the exact words, but I know it was in compliance with my orders that these records be brought up to date. The asignment was brought to me and I signed it on the first of November, 1921.

Q. 41. Could you state approximately how many documents you sign a day in your position?

MR. KRESEL: If the Court please, I object to that upon the ground that it is immaterial and irrelevant, and I do not understand that Colonel Anderson desires to use the fact of the number of documents as an excuse, if an excuse is needed by Colonel Miller, for the signing of these documents. I object to it upon the ground that it is immaterial and irrelevant.

THE COURT: The objection is sustained.

MR. ANDERSON: I note an exception.

Q. 42. You stated that you had a talk with Mr. Garvan about becoming director of The Chemical Foundation, as I understand it, in March, 1921; is that true?

A. Yes, sir.

Q. 43. It appears in the minutes of The Chemical Foundation introduced in evidence here, that on April

4, 1921, you were elected a director of The Chemical Foundation; and, thereafter, the minutes contained the following entry:

> "The President then stated that Mr. Thomas W. Miller, who had been elected director of the Corporation at the adjourned annual stockholders' meeting held on the 4th day of April, 1921, had communicated to him that owing to the demands on his time, he found it impossible to accept the honor of being a director of The Chemical Foundation, Incorporated, and for that reason had declined to qualify."

I have read from the minutes of the Board of Directors of the 21st day of June, 1921. Can you state whether you ever served either as director or as vice-president of The Chemical Foundation?

A. I did not qualify; therefore I could not serve.

Q. 44. Did you have any talk with Mr. Garvan on the subject after the one you mentioned in March?

A. Yes. I can not recall the exact date; but Mr. Garvan and I talked this over a number of times; and we both mutually agreed that because of the pressing official duties I could not accept or qualify.

MR. ANDERSON: The witness is with you, Mr. Kresel.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 45. Colonel, how long before your appointment as Alien Property Custodian—I mean your actual appointment—did you know that you were to be appointed?

A. About a week, Mr. Kresel.

XQ. 46. During that week did you undertake to inform yourself in any way about the duties of Alien Property Custodian or the history of that office?

A. Right there, I was sworn in the 16th of March,

and the week is running back from the 16th of March. No, sir; I needed all the time I had, Mr. Kresel, to—

XQ. 46a. Well, you did not do it?

A. No, sir.

XQ. 47. Just let us stop there. Now, before you became Alien Property Custodian, of course, you had a general knowledge of what that office was?

A. I must confess, Mr. Kresel, I did not. Of all the wartime activities I know least about that.

XQ. 48. Well, you did not?

A. Did not.

XQ. 49. On the 16th of March, 1921, when you were sworn in, you surely had a general knowledge of what the office was that you were about to take?

A. As I—yes, a general knowledge, very general.

XQ. 50. That is all I am asking. At least you knew who had been your predecessor?

A. I had not had the pleasure of meeting him, but I knew who he was.

XQ. 51. And you knew that your immediate predecessor was not the first officer that occupied the office of Alien Property Custodian?

A. Yes.

XQ. 52. In other words, when you were sworn in as Alien Property Custodian you knew that Mr. A. Mitchell Palmer had occupied that office?

A. Yes.

XQ. 53. And that he had been preceded by Mr. Garvan, whom you were succeeding?

A. Yes.

XQ. 54. And you knew, did you not, that that office had been in existence since the fall of 1917?

A. Yes.

XQ. 55. When you entered office, you certainly then set about to inform yourself of what the office was, what the duties of the Alien Property Custodian were,

what property he had in charge; in a general way to understand your job, so to speak, did you not?

A. Yes, sir, and I am still engaged in that practice.

XQ. 56. And I assume that one way that you had of informing yourself upon the subject was the records of the office?

A. Oh, yes.

XQ. 56a. And you certainly had access to those and made use of those in so far as you felt it necessary?

A. As the cases arose, when it was necessary.

XQ. 57. Well, it was not very long after you became Alien Property Custodian that you learned that your predecessor had made a report to Congres as to the activities of that office, is that not right?

A. The report that you refer to was February 27, 1919, by A. Mitchell Palmer?

XQ. 58. February 22nd.

A. February 22nd, yes, by A. Mitchell Palmer.

XQ. 59. You were familiar with that report?

A. Oh, I knew that—there was only one copy in the office, but I had access to it.

XQ. 60. And you certainly availed yourself of whatever information that document disclosed, did you not?

A. Well, Mr. Kresel, I wouldn't swear on the stand today that I read it through from cover to cover immediately.

XQ. 61. Oh, I understand that; but it was not very long after you became Alien Property Custodian that you did refer to that report, was it?

A. A trust company that has—

XQ. 62. Now just answer my question, please.

A. I won't say that I have—

XQ. 63. Very well, then, I will have to be satisfied with your answer; but please do not go off into

something else. At all events, the time did arrive when you read that report; not from cover to cover, as you suggest; but you read it?

A. Well, my familiarity—

XQ. 64. No, no; now did you?

A. I did not rely on that report to familiarize—

XQ. 65. I did not ask you anything about relying on it. Now, if you will please pay attention to my question: I say, a time arrived when you did read that report, did there not?

A. Under oath here I will not say that I have read that report in its entirety, no.

XQ. 66. I did not ask you whether you had read it in its entirety.

A. I have refered to it, yes, sir, and still refer to it.

XQ. 67. All right. And when you referred to it, you could not have failed to observe that in that report there was a statement as to The Chemical Foundation; is that not right?

A. I did not read that, as far as I recollect, Mr. Kresel.

XQ. 68. You mean that as you sit there now on the witness stand you do not know that that report refers to The Chemical Foundation?

A. Why, naturally it does, because that is one of the trusts in the office—

XQ. 69. Now, all right; it does.

A. (continued) Of fifty thousand.

XQ. 70. It refers to the organization of The Chemical Foundation, doesn't it?

A. I—

XQ. 71. Doesn't it?

A. I presume it does.

XQ. 72. It refers to the sale of the patents here in question to The Chemical Foundation, does it not?

A. I presume it does.

XQ. 73. It refers to the price paid for the patents, does it not?

A. I presume it does.

XQ. 74. It refers to the conditions of its charter, does it not?

A. I presume it does.

XQ. 75. Well now, among the records of the Alien Property Custodian's office when you assumed charge in March, 1921, there were copies of the assignments that had been made by your predecessor to The Chemical Foundation, were there not?

A. No, Mr. Kresel. I had to go to the Patent Office for those.

XQ. 76. There were not?

A. There were not.

XQ. 77. That is your answer?

A. To the best of my knowledge and belief.

XQ. 78. You had a search made?

A. Yes, sir.

XQ. 79. And could not find it?

A. Yes, sir.

XQ. 80. When did you institute the search?

A. I have no recollection, Mr. Kresel.

XQ. 81. Well, I am not pinning you down to a specific date. What month? What year?

A. I really can't answer that with any degree of certainty.

XQ. 82. How soon after you became Alien Property Custodian?

A. I can not answer that with any degree of certainty.

XQ. 83. Well, approximately?

A. I know this: that when the time came—

XQ. 84. No, no; now, please. Approximately when was it that you instituted a search for these assignments and could not find them?

A. I can not give you any approximate date.

XQ. 85. Was it shortly after you became Alien Property Custodian?

A. Why, Mr. Kresel, I really don't know.

XQ. 86. Was it before this suit was instituted?

A. Oh, it must have been before that; it must have been.

XQ. 87. You know this suit was instituted in September or October of last year?

A. Yes.

XQ. 88. So it was before that, anyway?

A. Oh, yes, certainly.

XQ. 89. Now, did you find any records in your office with reference to the transaction between the Custodian and The Chemical Foundation?

A. Oh, yes; there were records there, Mr. Kresel.

XQ. 90. Surely records from which you could learn and did learn what the transaction was that had taken place?

A. My general information—my information on the transaction was more of a general character, that I arrived at from discussions with friends of mine who were interested in it.

XQ. 91. I do not want to go into that, Colonel. You did learn what the amount of money was that had been paid to the Alien Property Custodian by The Chemical Foundation?

A. Yes, that was a matter of common knowledge. I knew that.

XQ. 92. Well, quite aside from being common knowledge, do you mean that your records, the Alien Property Custodian's records, did not show it?

A. Well, they must show it, Mr. Kresel.

XQ. 93. Did they not show it?

A. Well, I am not going to say on the stand under oath that I personally looked at the records that showed it.

XQ. 94. I did not ask you whether you looked.

I am trying to find out what you, as Alien Property Custodian, know about the records of your own office.

A. I know the records must show that a quarter of a million dollars was paid for the patents.

XQ. 95. Don't you know that they do show exactly what was paid?

A. I cannot qualify my answer any more than I have, Mr. Kresel.

XQ. 96. The best you will do is that they must show; is that it?

A. Yes.

XQ. 97. And that information was available to you the minute you put your foot into the office of Alien Property Custodian, was it not?

A. Together with information—

XQ. 98. Wasn't it?

A. (continuing) —on fifty thousand other matters.

XQ. 99. Well, wasn't it?

A. Yes.

XQ. 100. When you went into the office of Alien Property Custodian on March 16th—I think you said that was the date?

A. Yes.

XQ. 101. (continuing) 1921, you knew that Mr. Garvan was the President of The Chemical Foundation, did you not?

A. Oh, I knew that.

XQ. 102. You knew at that time that when the transaction between The Chemical Foundation and the Alien Property Custodian took place involving the sale of these patents Mr. Garvan had been the Alien Property Custodian?

A. Yes, sir.

XQ. 103. You say that you knew the amount of money that had been paid, whether from the records or from general conversation?

A. Yes, sir.

XQ. 107. You knew that the patents that were sold to The Chemical Foundation were German patents that had been seized by the Alien Property Custodian?

A. Yes, sir.

XQ. 108. You knew when you became Alien Property Custodian that the sale of the patents to The Chemical Foundation had not been a sale at public auction?

A. Yes, sir.

XQ. 109. You knew, therefore, that it had been at a private sale?

A. Yes, sir.

XQ. 110. You knew, did you not, that in order to have a private sale, there had to be an Executive order?

A. If the property was valued at over $10,000.

XQ. 111. And, of course, you knew that this property was valued at more than $10,000?

A. Yes.

XQ. 112. You knew that The Chemical Foundation was issuing licenses on these patents that had been transferred to it?

A. I knew that, Mr. Kresel, when the first transaction of that character came to my attention after taking office.

XQ. 113. How soon after taking office was that?

A. This Norma Company transaction.

XQ. 114. That was in April?

A. Yes.

XQ. 115. That was only about a month after you became Alien Property Custodian?

A. Yes.

XQ. 116. Yon knew when you took office who the voting trustees of the stock of The Chemical Foundation were?

A. I know I did not, Mr. Kresel.

XQ. 117. Did not Mr. Garvan in his conversation with you on the 31st of March tell you that Judge Ingraham and Mr. Bannard and Mr. Cleveland Dodge and two others whose names I do not now recall were the voting trustees?

A. Yes, he certainly did. But that was not when I took office. That was fifteen days later. You asked me if I knew when I took office.

XQ. 118. All right. Fifteen days later.

A. I want to be specific as long as you want me to be.

XQ. 119. Fifteen days later you knew that?

A. Yes.

XQ. 120. But up to the time of the talk with Mr. Garvan on the 31st of March, you had not read the charter of The Chemical Foundation; that is your statement?

A. No, sir.

XQ. 121. Nor had you read it prior to the execution by you of this assignment of April 26th?

A. No, sir.

XQ. 122. I want to take you back for a minute to your conversation with Mr. Garvan on the 31st of March, 1921. As I understand it, that was the first time you met Mr. Garvan?

A. Yes, sir

XQ. 123. And he called on you at your office?

A. Yes, sir

XQ. 124. That is, the Alien Property Custodian's office?

A. We had a long distance telephone conversation previously, but just merely perfunctory.

XQ. 125. At that conversation, Mr. Garvan told you in some detail of his connection with The Chemical Foundation, did he not?

A. Oh, yes.

(No Q. 126.)

XQ. 127. He told you the purposes of the Foundation?

A. In a general way; yes, sir; and brought me some very interesting books to read.

XQ. 128. Brought you some books to read, but not the charter.

A. I can not recollect, Mr. Kresel, whether in these pamphlets there might have been the charter.

XQ. 129. He told, did he not, that The Chemical Foundation had been organized with the assistance and co-operation of the chemical industry?

A. Yes, I understood that, of course.

XQ. 130. He told you, did he not, that the reason for putting these patents in the hands of a corporation like The Chemical Foundation was, whether true or no, in order that they might not get back to the Germans?

A. Now, Mr. Kresel, I can not swear to these exact words.

XQ. 131. Of course not; substantially that?

A. I know the general outline and I had no hesitancy in saying a while ago that I gave my acquiescense.

XQ. 132. He told you substantially that any way, did he not? I am not asking you to repeat the exact words. Of course, you can not.

A. Yes, I would know that as I got into the matter.

XQ. 133. He told you, did he not, that The Chemical Foundation was issuing non-exclusive licenses?

A. Well, I do not know whether he told me, but I knew it.

XQ. 134. He told you, did he not, that the stockholders of The Chemical Foundation could in no event get more than 6 per cent return on their stock?

A. I do not know whether he told me that or not, but that is a well understood statement.

XQ. 135. Did he not tell you that The Chemical Foundation was issuing licenses to all American citizens at the same rates, at equal rates?

A. I knew that.

XQ. 136. Did he not tell you or did you not know at that time that all earnings of The Chemical Foundation over and above the 6 per cent return on the stock were to be used for the advancement of chemical science in the country?

A. I naturally knew that.

XQ. 137. You knew, did you not, that Mr. Choate, who had been active in the work of the Alien Property Custodian's office during the war, was general counsel of The Chemical Foundation?

A. No, I had not had the pleasure of knowing Mr. Choate up to this time we are discussing.

XQ. 138. I did not ask you whether you knew him personally.

A. No, I would say his name had not impressed itself on me at that time.

XQ. 139. Then you did not know that fact on the 31st of March?

A. No, I do not think I did.

XQ. 140. How soon after that did you learn that?

A. I really do not know.

XQ. 141. It was very shortly thereafter?

A. I must have known that he was the counsel, but I do not know the exact date.

XQ. 142. I mean at the time you were elected director, for instance, you certainly knew that?

A. I might very well have known it.

XQ. 143. Yes. All right.

A. On the other hand, I won't swear that I did.

XQ 144. Did you know that Mr. Hoguet, who had been patent attorney during the war for the Alien

Property Custodian, was patent attorney of The Chemical Foundation?

A. Well, my same answer with regard to Mr. Choate would apply to Mr. Hoguet.

XQ. 145. You think that, but not on the 31st of March?

A. If you want me to swear to it, I will say no, I do not think I did.

XQ. 146. Can you tell me when you learned that fact?

A. No, I can not give the approximate date.

XQ. 147. Was it shortly after you became Alien Property Custodian?

A. Naturally, the name Hoguet came to my attention in my dealings with The Chemical Foundation. I do not know whether I have ever had the pleasure of meeting him or not.

XQ. 148. You verified this Bill of Complaint, did you not?

A. Yes, sir

XQ. 149. You are an attorney, though you are not practising law, and when I speak of verifying the Complaint you know what I mean?

A. Yes.

XQ. 150. That is, you swore to this affidavit that is attached to the Complaint?

A. Yes, upon advice of counsel.

XQ. 151. What is that?

A. Upon advice of counsel, which in this instance is the Department of Justice.

XQ. 152. I see. I will come to that in just a minute. Before you verified this Complaint you received a letter from the President, did you not?

A. Yes, sir

XQ. 153. And that was on or about July 1, 1922?

A. Yes, sir.

XQ. 154. You have seen the copy of the letter

which is attached to the Bill of Complaint, and there is no doubt that that is a correct copy?

A. Yes, sir; I have the original with me.

XQ. 155. Did you before bringing this suit make a demand upon The Chemical Foundation in accordance with the instructions contained in the President's letter to you?

A. I followed the instructions of the President.

XQ. 156. You did?

A. Through the—

XQ. 157. Well, you did. You made the demand, did you not?

A. I made the demand, yes.

XQ. 158. And The Chemical Foundation declined to comply with it?

A. Yes, sir.

XQ. 159. Do you remember when you made that demand?

A. One minute, I will give you the exact date.

XQ. 160. Well, it was July 8, 1922, and if my date is wrong you may correct me later.

A. All right.

MR. KRESEL: He won't stop to do that now.

MR. GALLOWAY: July 8th is right.

MR. KRESEL: July 8, 1922.

XQ. 161. You verified this Complaint on the blank day of September, 1922—I have it in my Bill. It was filed September 8, 1922, and, subject to correction, Colonel Miller, please assume that.

A. Yes, sir.

XQ. 162. Now reading to you from the letter of the President to you, the President says, after describing what the transaction had been:

"On the face of such an action it became so apparent to me that an inquiry should be made."—

will you follow me, please?

A. Yes, I am (examining book).

XQ. 163. (continuing) —"that I asked for a report by the Department of Justice on the sale of this enemy property to The Chemical Foundation. It appears that the sale was made at so nearly a nominal sum that there is reason to believe that this Government has not faithfully observed the trust which was implied in the seizure of this property. The circumstances relating to the entire transaction are of such a character that full investigation becomes a public duty." Prior to your making the demand on The Chemical Foundation what investigation did you make regarding this transaction? When I say "you" I mean in your official capacity, of course.

A. I can not say, Mr. Kresel, that The Chemical Foundation was the subject of any particular investigation by me personally or by my office.

XQ. 164. That answers my question. Who did make an investigation, to your knowledge?

A. I can not answer that, outside of my own department.

XQ. 165. Then you do not know?

A. I do not know, Mr. Kresel, that—I do not believe that The Chemical Foundation Trust was the subject of any particular investigation by my office.

XQ. 166. Then you do not know that anybody made an investigation of this transaction between the Alien Property Custodian and The Chemical Foundation; is that your answer?

A. That is, not to my knowledge; but that would not mean that it had not occurred.

XQ. 167. That is all I am asking—to your knowledge. Do you know a man named C. C. Bennett?

A. No, I don't.

XQ. 168. Have you ever met Gaston B. Means?

A. I have met him occasionally, yes.

XQ. 169. He was brought to your office along

about the time when this suit was brought, was he not?

A. No, sir.

XQ. 170. Or was it prior thereto?

A. I can give you—

XQ. 171. No.

A. I want to give you the date now that I knew him first.

XQ. 172. Yes, please.

A. In October, 1921, I think I first saw this man.

XQ. 173. October, 1921?

A. Yes.

XQ. 174. That was after you had become Alien Property Custodian?

A. Yes, sir.

XQ. 175. He was brought to your office?

A. He came there as an agent from the Department of Justice for some information which I—

XQ. 176. And was or was not that information in connection with The Chemical Foundation?

A. I must answer it this way: It was either The Chemical Foundation or the Bosch Magneto.

XQ. 177. Well, do you not know it was with reference to both?

A. When I swear to something, I want to be specific.

XQ. 178. Of course you do, Colonel.

A. But this man has talked to me in his official capacity as an agent of the Department of Justice about both those matters and I do not know which one came first. It was the first time I had met him.

XQ. 179. But he has in his official capacity as a representative of the Department of Justice talked to you at one time or another before the bringing of this suit with reference to the Alien Property Custodian and The Chemical Foundation?

A. And may I say there —

XQ. 180. Just say yes or no and then we will see whether you may say something more.

A. Yes.

XQ. 181. Before you received the President's letter on the first of July had you been consulted about it?

A. I had not been directly consulted.

XQ. 182. That is all. You did not know that the President was about to issue any such communication?

A. Do you mean on the 1st of July?

XQ. 183. Before the receipt of the letter?

A. Well, no, I did not know that the letter would arrive that day.

XQ. 184. Then you missed my point? Whether you knew that it would arrive that day or no, my question is did you know that the President was about to send you a communication of that sort?

A. No, I did not.

XQ. 185. Were you consulted about bringing this suit prior to the time that you were asked to verify the Bill of Complaint?

A. I was consulted about the advisability of taking some action, but not within the few days previous to July 1, 1922.

XQ. 106. I think you misunderstand me, Colonel. This suit was not instituted until the 8th of September, 1923.

A. Oh, I see.

XQ. 187. My question is whether prior to the date when you verified this Bill of Complaint you had been consulted about the bringing of this suit?

A. Well, my office, Mr. Kresel?

XQ. 188. No, I mean you.

A. Me personally?

XQ. 189. Yes.

A. Yes, I had been called to the Attorney General's office, I remember, for one conference after the

demand had been refused by The Chemical Foundation.

XQ. 190. That is, after July 8th?

A. Yes, sir.

XQ. 191. And can you give me the date when you were called to the Attorney General's office?

A. It must have been some time between July 8th, and say, the middle of August. I can not give you the date. I know if I had my—

XQ. 192. Between July 8th and the middle of August?

A. I could give it if I had my memorandum.

XQ. 193. That is near enough. Of 1922?

A. Yes, sir.

XQ. 194. I am not going to ask you for any conversations; I am simply going to ask you to whom you talked there.

A. In conference, you mean?

XQ. 195. Yes.

A. The Attorney General of the United States, Colonel Henry W. Anderson, Special Assistant, Mr. Galloway, W. W. Wilson, and I don't want to miss any others, but there may have been some there.

XQ. 196. Mr. Wilson, whom you have just mentioned, is your present general counsel?

A. Yes, sir.

XQ. 197. That is, the general counsel of the Alien Property Custodian's office?

A. Yes, sir.

XQ. 198. At the time when this conference was had, did you know a suit was going to be brought against The Chemical Foundation?

A. Well, I had reason to know, Mr. Kresel—

XQ. 199. Well, did you or did you not?

A. Well, my natural assumption is after the President's letter that an action would be brought upon the refusal of the demand.

XQ. 200. Colonel, I do not want to fence with you about it.

A. If it will save time, I will say yes, then.

XQ. 200-a. That is all right, then. And did you know at that time—that is, at the time of this conference in the Attorney General's office that you would be asked to verify this Complaint?

A. Well, I presume that I would have something to do with it.

XQ. 201. I do not want you to presume.

A. No, I did not know I would have to sign it.

XQ. 201a. Is it not a fact, Colonel Miller, that not until the day when the bill was presented to you for signature, did you know that you would be asked to verify it?

A. I will answer in the affirmative.

XQ. 202. I knew you would. That is why I asked you. Now, when you verified this bill, of course you did not read it?

A. I read it. Yes, I read it, naturally.

XQ. 203. Of course, you would. You would not sign and swear to this sort of document without reading it. You remember the form of the verification, do you not?

A. Yes.

XQ. 204. You swear here that you have "read the foregoing Bill of Complaint and that the matters and things therein stated of which the defendant has knowledge are true and that the matters and things therein stated upon information and belief he believes to be true."

A. But may I say there, as you know, the Department of Justice is the counsel for my office.

XQ. 205. Oh, yes, I know that.

A. And you know the system in preparing suits or answers to suits.

XQ. 206. I do not know and I think my knowledge

of it is entirely immaterial. When you read the Bill, it was already printed the way it now appears, was it not?

A. Yes, I saw the copy in the printer's dummy.

XQ. 207. Did you suggest or make any corrections therein before verifying it?

A. No.

XQ. 208. Have you a copy of this Bill before you? If not I will let you have one.

A. The Judge has given me one.

XQ. 209. I direct your attention to page 15 of the Bill, the fifteenth paragraph. You say as follows:

> "In the administration of said 'Trading with the Enemy Act' as amended by the Act approved March 28, 1918, aforesaid, it was determined by the Alien Property Custodian and others charged with the administration thereof under his direction and by the Attorney General of the United States, that said 'Trading with the Enemy Act,' as amended, did not authorize the seizure and sequestration or sale or other disposition of enemy-owned patents, copyrights, trade-marks, labels, and similar rights or applications therefor, or contracts with respect thereto, mentioned in the Ninth Paragraph hereof."

In the first place, I direct your attention to the fact that you are making that allegation not upon information and belief, but upon knowledge. You notice that, do you not?

A. Yes.

XQ. 210. Will you please tell me how you knew that the Alien Property Custodian and others charged with the administration of his office had held the view, as you say, and had determined that the Trading with the Enemy Act did not authorize the seizure of patents?

A. Well, I recall the debates leading up to the so-called patent amendment which was not put into

the alien property act, I think, until down in October or November, 1918.

XQ. 211. What debates; where?

A. Either debates in Congress or hearings before Congressional committees. I generally understood—

XQ. 212. Wait a minute. Let us get through with one thing at a time.

A. Good.

XQ. 213. What committees were there any debates before upon this question?

A. I do not know the specific names of the committees.

XQ. 214. Which Congress was it that you heard debates in with reference to this question?

A. I was not able to hear debates in that Congress. I was in France then.

XQ. 215. Then I want to know—I will repeat my original question—I want to know what knowledge you had that the Alien Property Custodian and others charged with the administration of the act had determined that under the act as it stood, with the amendment of March 28, 1918, the seizure of patents was not authorized?

A. Well, I knew, Mr. Kresel, that the so-called patent amendment had not been put into the alien property act until the Fall of 1918, which would enable patents and trade-marks to be sold the same as other alien property was sold.

XQ. 216. Colonel, I quite understand that, but you are missing my question.

A. I do not want to.

XQ. 217. Of course, you don't. I did not intimate that you do. I want to repeat the question. What fact was it that you had, which enabled you to state positively, and not upon information and belief, that the Alien Property Custodian and others charged with

the administration of this act had determined that the act did not permit the seizure of patents?

A. Only my general information with regard to legislation.

XQ. 218. That is, all you knew about it was that it was not until the Fall of 1918 that a specific amendment authorizing the seizure of the patents was passed, is that it?

A. Yes; and I of course had access to my records, where they were hearings that my predecessors had taken part in. I can not specifically say, Mr. Kresel, when and how I learned it; but I knew that an amendment was necessary to permit the sale of patents.

XQ. 219. What records did you see before you verified this Bill?

A. I am unable to answer specifically what records.

XQ. 220. Were there any records that you saw from which you learned that the Alien Property Custodian had so determined? And if so, what are the records?

A. I am unable at this time to answer that in detail such as you request.

XQ. 221. You say that the Alien Property Custodian and others charged with the administration of the act had so determined. Who were the others?

A. I presume his—

XQ. 222. Not what you presume, Colonel. Please let us not presume.

A. Well, the others were undoubtedly his Bureau chiefs under him.

XQ. 223. Who were they?

A. I do not know the exact persons.

XQ. 224. Did you know when you verified the Bill?

A. I did not know the names of the personnel, no.

XQ. 225. I direct your attention to Paragraph 16th of the Bill, on Page 17. Before that allegation

the Bill sets forth that Mr. Bradley, representing the Alien Property Custodian, had appeared before a Congressional Committee and had given certain testimony. You are familiar with that?

A. Yes.

XQ. 226. In the sixteenth paragraph you say this:

> "Acting upon the faith of the representations aforesaid and solely for the purposes aforesaid, Congress did, by an Act entitled 'An Act making appropriations to supply deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and nineteen, and prior fiscal years on account of war expenses and for other purposes,' approved November fourth, 1918, amend sub-section (c) of section 7," and so on.

How did you know so that you could swear upon knowledge, that acting upon the faith of the representations made by Mr. Bradley and solely upon that Congress passed that amendment?

A. Well, Congressional committees undoubtedly—Congressional committees follow the recommendations of the Division or Bureau Chief or his subordinates involved when legislation is before them affecting those offices.

XQ. 227. Is that all you want to say about that?

A. Yes. I am giving it to you as I understand it.

XQ. 228. Well, do you think or did you know that every Congressman that voted for that amendment did so relying solely upon what Mr. Bradley had said to the committee?

A. No, I did not know that.

XQ. 229. When this was presented to you, you could not have failed to observe that statement. Did you ask any question about that to satisfy yourself whether that was true?

A. No, not that I recollect.

XQ. 230. I direct your attention to page nineteen of the Bill, Paragraph Eighteenth:

"Complainant is informed and believes"

Now, you see here you are stating this upon information and belief.

> "and therefore avers that for several years prior to the declarations of war aforesaid various persons, firms, and corporations engaged in the production, manufacture, and sale of dyes, and the ingredients thereof, and of kindred or similar chemical materials and products, had been engaged in the formation and development of plans for the complete monopolization and control of the dyestuffs and organic chemical industry in the United States."

First, I want you to tell me who were the persons, firms and corporations that had thus been engaged in the formation and development of plans for the monopolization of the dyestuffs industry?

A. I can not give all the names that have been brought to my attention. Therefore, I do not care to name any of them.

XQ. 231. Did you know that you verified in this Bill the names of the various persons, firms and corporations engaged in that monopoly?

A. I can't say, Mr. Kresel, that I could recite them. I know that—

XQ. 232. Did you know who they were?

A. Well, answering generally, no.

XQ. 233. Of course, if you had known, you would have insisted upon putting in the names, would you not?

A. I do not know whether I would or not, Mr. Kresel.

XQ. 234. You realize that that would have been the proper thing to do, don't you?

A. Well, in—

XQ. 234. (Continued) And that is the reason why you hesitate to mention even any names?

A. Any advice as to how this Bill should be drawn had better be given to the Department of Justice. They drew it.

XQ. 235. Who to your knowledge had a complete monopolization and control of the dyestuffs and organic chemical industry in the United States, as you allege here?

MR. ANDERSON: I beg your pardon. I know counsel does not wish to misstate the allegations; but he does not state on his knowledge; he states on information and belief.

MR. KRESEL: I withdraw the question.

XQ. 236. What information did you have as to the persons who had a complete monopolization and control of the dyestuffs and organic chemical industry?

A. The only information that I had personally—

XQ. 237. Not what you have now, what you had when you verified the Bill.

A. No, had then.

XQ. 237. (Continued) Yes.

A.—had come from my interest and association personally with those who were interested in a dye embargo.

XQ. 238. That does not give me the answer. Who were they?

A. I said, Mr. Kresel, I could not commence to name all these corporations. Therefore, I do not—will not single one out or two out to talk about them.

XQ. 239. And you said you did not know at the time. You want to stand by that answer, don't you?

A. That I did not know any of their names?

XQ. 240. Yes.

A. Oh, I certainly knew the names of some of the chemical corporations.

XQ. 241. I am not asking you what you know about them.

A. Well, I knew them. I could not have been associated in a personal capacity, as I was at Washington without knowing.

XQ. 242. Colonel, I did not ask you that. You are missing my question. I ask you whether, when you verified this Bill, you knew the names of the persons, firms and corporations who were engaged in the production, manufacture and sale of dyes and who had been engaged in the formation and development of plans for the monopolization of that industry?

A. No, I did not know them in their entirety.

XQ. 243. I will have to ask you then, Colonel, though you seem to hesitate to give them, to tell me such names as you did know?

A. Well, I will tell you, Mr. Kresel, I would prefer not to name any individual corporations. If I have not satisfied you with my answers—it is not because I care to evade anything.

XQ. 244. I know, Colonel, and please do not think that I am intimating in the slightest degree that you are evading anything.

A. You know—

XQ. 245. I know that.

A. You know very well that I know a good many sides of this question.

XQ. 246. No, I do not.

A. I thought I—

XQ. 247. I plead complete ignorance.

A. Well then, we do not know each other as well as I thought we did.

XQ. 248. But that is neither here nor there. My question is this: Did you or did you not, when you verified this Bill of Complaint, know who were the various persons, firms and corporations that had been

engaged in monopolizing the dyestuffs industry of the country?

A. Now, how is this? Not specifically.

XQ. 249. My question stands as I put it.

A. Well then, let it go in as "No."

XQ. 250. "No," that is an answer. Now I direct your attention to page 23 of the Bill, Paragraph Twenty-Third. You say as follows:

> "Complainant is informed and believes and therefore avers that in pursuance of said plan, scheme, and conspiracy the persons, firms, corporations, and associations aforesaid, parties thereto, about or soon after June, 1918, through their duly authorized representatives, and especially through one Morris R. Poucher, representing and acting for said conspirators," etc.

You have named Morris R. Poucher. I want to know who the other duly authorized representatives are that you speak of in that paragraph?

A. I can not give them to you, Mr. Kresel.

XQ. 251. Did you know who they were at the time when you signed and verified this Bill?

A. No, sir.

XQ. 252. I direct your attention to Paragraph Twenty-Fourth of your Bill, page 25: You say, first sentence at the top of page 25:

> "Said parties thereupon arranged with the Alien Property Custodian immediately following the enactment of said amendment approved November 4, 1918, of the 'Trading with the Enemy Act' that a patent attorney who was then engaged by and represented the E. I. duPont de Nemours & Co. and another patent attorney who was then engaged by and represented the National Aniline and Chemical Company, together with the necessary assistants who were employed by the said two corporations." and so on.

Now I want to know who were the parties that thereupon arranged with the Alien Property Custodian, as you say there, to do the things that you say?

A. I do not know who they were.

XQ. 253. Did you know at the time when you verified this Bill?

A. I knew from the advice given to me by the Department of Justice officials who prepared this Bill, that they had discovered evidence in the files which would substantiate them in putting this in the Bill.

MR. KRESEL: I ask that that answer be stricken out, your Honor, as not responsive.

THE COURT: Motion granted.

XQ. 254. Did you know who were the parties that made this arrangement that you specify here in the Bill?

A. No, sir.

XQ. 255. Did you know at the time when you verified the Bill?

A. Same answer.

XQ. 256. "No, sir," all right. I direct your attention to page 27 of the Bill. In the Twenty-Fifth paragraph thereof you say as follows:

> "Further carrying out and in pursuance of said scheme or conspiracy, the persons, firms, corporations, and associations aforesaid, acting through their common representative or representatives as aforesaid, procured and induced the said Francis P. Garvan,"

And so on, to do certain things. Now, you have already testified that you did not know who the persons, firms, corporations and associations were. I now ask you to say whether when you signed and verified this Bill, you knew who the common representative or representatives were that you speak of there?

A. No, sir.

XQ. 257. Now I turn to page 29 of the Bill, twenty-eighth paragraph, where you say:

> "In the further carrying out of said scheme or conspiracy, the parties aforesaid engaged in the organization of said defendant corporation for the purposes aforesaid and in order to prevent and avoid any competitive bidding for said patents and other rights when sold, undertook to induce, and did in fact induce substantially all of the persons, firms, and corporations engaged in said dyestuffs and chemical industry who might become bidders for said patents, copyrights,"

and so on, to do certain things. I want to know who were all of the persons, firms and corporations, substantially all as you say, who were in the dyestuffs and chemical industry.

A. I can not name them.

XQ. 258. Did you know at the time when you verified the Bill?

A. Not in detail, no.

XQ. 259. Did you know any of them?

A. I can not give their names Mr. Kresel.

XQ. 260. Please turn to page 39 of the Bill, paragraph Thirty-Four. I want you to follow me closely on this, if you will:

> "Complainant is informed, believes, and therefore avers that said orders of said Frank L. Polk—" you know what orders are being spoken of there?

A. Yes.

> XQ. 261. "—were in fact prepared by or at the instance of the said defendant, The Chemical Foundation, Incorporated, and at the instance and procurement of the persons, firms, and corporations in control of said dyestuffs and chemical industry, in pursuance of the scheme and con-

spiracy as hereinbefore set forth; that necessary and essential facts with regard to the seizure and proposed and pretended sale and disposition of said patents and other rights mentioned in said orders at private sale were not stated or disclosed to said Frank L. Polk, but were withheld from him and suppressed."

What facts with regard to the seizure and proposed and pretended sale and disposition of this property did you know when you verified this Bill had not been stated or disclosed to Frank L. Polk or had been withheld from him and suppressed?

A. The evidence as collected by the Department of Justice officials and brought to me in the Bill was the only information that I had.

XQ. 262. Colonel, that does not answer my question, if you will permit me to say so. I want to know what facts you knew of and had been informed of which had been suppressed and withheld from Mr. Polk.

THE COURT: I understood the witness in his answer to say that the only information he had on that matter was what was disclosed by the Bill and the exhibits which were presented to him for execution. Does that not answer your question?

XQ. 263. Was that your answer?

A. Yes, that is just as I said it.

XQ. 264. You go on and say:

"that other facts in connection therewith, and mission, charged with issuing licenses under the especially the attitude of the Federal Trade Comenemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk."

What facts did you know, when you verified this Bill, had been misstated and misrepresented to Mr. Polk?

A. The same answer that I gave to the previous question.

XQ. 264. Colonel, that does not satisfy me on this point. You are making a serious charge here. You are making a charge that somebody, whom you have not named yet, had made a deliberate misrepresentation and had deliberately misstated facts to Mr. Polk. Surely, before you verified this Bill, you must have asked what there was upon which to adduce such a statement. Now please tell me what it was?

A. I can not give you anything on that point in answer to your question. But you must know—and I do not know whether you will strike it out of the answer or not,—the way—

XQ. 265. Pardon me a minute.

MR. KRESEL: I move to have stricken out from the answer the statement beginning with the words "but you must know." He answers that he can not give the information. That satisfies me.

A. And does the previous answer stay in there, that I desire to give the same answer to the previous question?

XQ. 266. Oh, yes; you have already given it.

A. All right.

XQ. 267. You say, "that his signature," speaking of Mr. Polk,

> "to said order and the issuance thereof by him were procured as aforesaid through such suppression and misrepresentation of the facts, which, if the same had been known by said Frank L. Polk, would have prevented his signing and issuing said orders."

Did you ever talk to Mr. Frank L. Polk upon this subject?

A. Not about this subject.

XQ. 268. Did you, when you signed and verified this Bill, know that if he had known certain facts, that you now can not tell me what they were, he would not have signed this order?

A. I was led to believe so by my counsel, the agents of the Department of Justice, who had interviewed Mr. Polk.

XQ. 269. And now that your recollection is refreshed, what is it that you were told by your counsel, the Department of Justice, had been misrepresented to Mr. Polk?

A. My recollection is not refreshed. The Department of Justice, as I have said all along through my answers, were my counsel and my agent in these matters; and they interviewed Mr. Polk and they brought this testimony, they brought in facts which they put in this Bill, which I signed.

XQ. 270. Well, what was it that they told you they had learned from Mr. Polk indicating that things had been misrepresented to him?

A. Specifically I can not answer that, Mr. Kresel.

XQ. 271. I wish you to turn now to paragraph Thirty-fifth of the Bill wherein you say at page 40 that you were informed and believe, and therefore aver that the Executive Order (this is the Executive Order which was signed by the President) "was prepared by or at the instance or procurement" of the defendant, The Chemical Foundation, Incorporated, and "at the instance or procurement of said persons, firms, and corporations in control of said dyestuffs and chemical industry and parties to said scheme or conspiracy hereinbefore set forth; that the facts hereinbefore set forth and other facts necessary and essential in relation to said seizure and proposed and pretended sale of said patents, copyrights, and other rights, and

rights arising out of or incident thereto, (and I skip the next sentence because it has been amended) were not disclosed to the President at the time of or before the signing of said Executive Order and that the same was signed and issued upon an entire misunderstanding or mistake of facts."

Now, surely, when you were signing this Bill, you realized the importance of that allegation did you not?

A. I can not say that I did above any others.

XQ. 272. Didn't you know when you were verifying this Bill that you were alleging that the President of the United States had made an Executive Order and that he did not know the facts upon which he was acting?

A. If you want to read that into the language, it is your privilege.

XQ. 273. Well, isn't that the language? Don't you so read it?

A. I have no comment to make on that.

XQ. 274. With that language before you, you surely realize the importance of it; and now I ask you to state what you knew, what facts there were that had not been disclosed to the President at the time of the signing of this order?

A. No facts other than what my agents, the Department of Justice, had brought into this bill or to this case.

XQ. 275. But what were they?

A. I can not discuss them, Mr. Kresel, because I am not familiar with them at this time.

XQ. 274. Did you know them when you signed the Bill?

A. Only in a general way, as I have indicated to you, when I signed the Bill.

XQ. 275. The fact is, Colonel, that this Bill was presented to you by the Department of Justice, you

were asked to sign it; you relied upon the Department of Justice as your counsel who told you it was all right; and you signed it; isn't that so?

A. That is what I have said all along substantially; and, acting upon the original letter of the President, who is my chief.

XQ. 276. You make a charge in this Bill of conspiracy and monopoly. Do you want to add anything to what you have already testified which in your belief, knowledge or imagination even will go to substantiate the charge of conspiracy or monopoly?

A. I have no other evidence to offer than what the Department of Justice offers.

XQ. 277. Who was it that presented this Bill to you from the Department of Justice?

A. Either Colonel Henry W. Anderson or Herman J. Galloway.

XQ. 278. You testified before a Committee of Congress called the Winslow Committee, do you remember?

A. Yes, sir.

XQ. 279. That was in 1922?

A. Well, it ran over.

XQ. 280. When was it?

A. In December, 1922 and January, 1923.

MR. ANDERSON: If your Honor please, I do not wish to interrupt the cross-examination of this witness, but I only want to say that when taking him outside of the cross-examination, counsel makes him his own witness. I have no objection on any other grounds.

XQ. 281. Colonel, I understand you want to get away early this morning?

A. Yes, sir.

XQ. 282. I want to be as obliging as I can. If it is important for you to catch your train, I will stop

now, though I am not through with you and I doubt whether I can get through with you in less than a half hour. I will do anything the Court and counsel desire me to do about it.

A. Unfortunately, Mr. Kresel, it is absolutely mandatory for me to catch a train in thirty-five minutes. I am very loath to leave at this present moment, but I suggest, if you care to, that you go ahead with me until I really have to leave.

XQ. 283. I will do anything that you want?

A. Thank you.

XQ. 284. Will you indicate to me when you desire to leave and I will stop instantly?

A. Thank you for your courtesy.

XQ. 285. Before this Committee, the Committee on Interstate and Foreign Commerce of the House of Representatives, Sixty-seventh Congress, Fourth Session on H. R. 13,496, supplemental to the Trading with the Enemy Act, you appeared as a witness on the 21st day of December, 1922, according to this record?

XQ. 285. (Continued) At page 32, speaking of the capacity in which you consider yourself to be as Alien Property Custodian, you said:

> "I merely am a stakeholder, and last June, previous to July 2, 1922, as trustee for the enemy, I brought a great number of suits," etc.

The point I wanted to direct your attention to is that you testify that you were trustee for the enemy; that is correct, is it not?

A. No.

MR. ANDERSON: Just a minute now. If your Honor please, I think I will note an objection to that question on the ground that it asks for the construction of the act. Otherwise I do not object to it, but I think the question as to what the wit-

ness may have thought is immaterial. It is merely a question of what his position was.

THE COURT: I am inclined to think I will not take time to hear discussion now.

MR. ANDERSON: No, I did not mean to enter into any.

THE COURT: We will not discuss it at this time, whether the objection is well taken or not, but at some later stage.

THE WITNESS: I would like to answer the question if I am not prevented from so doing.

XQ. 286. No, sir; you have answered the question I have asked you, whether you so testified, and you said you did, did you not?

A. You want no elaboration?

XQ. 287. No, but you did so testify?

A. Can't a witness have some—

THE COURT: No, Colonel, you are consuming time. Your counsel may bring it out on re-direct if necessary.

THE WITNSS: Because I am the author of that Act.

XQ. 288. Pardon me?

A. I am proud of the fact that I am the author of that Act. That is, I had a good deal to do with drawing it up.

XQ. 289. I do not know what act you are referring to, but please do not let us go into that.

A. All right. The one on the third page there, that you just referred to.

XQ. 290. As long as you insist on that I will let you do it. You are speaking now of the Winslow Bill?

A. Yes, sir.

XQ. 291. You mean the bill that was passed by Congress authorizing the Alien Property Custodian to

return to the Germans all property that you as Alien Property Custodian held up to the sum of $10,000?

A. Yes, sir.

MR. ANDERSON: I do not admit that construction of the Winslow Bill. I think while you can identify the bill or the witness may say if he wishes that he was the author of it, the meaning of the bill should not be put upon the record by counsel. I therefore object to that question.

THE WITNESS: Could I, then, say this to Mr. Kresel—

XQ. 292. No, we will get along, Colonel, if you will be the witness and let me be the lawyer. Whatever the construction of the act is, and I am not asking you to construe it, that is the act you say you were the author of?

A. Well, I was stating it a little strongly I recommend it, and for very good reasons, having an interest in the American claims against the Germans. I want that to go on the record, because if you read the testimony you will see what I said in there. I am unwilling to have it go in just briefly on the one or two points you want to bring out.

XQ. 293. Colonel, you say that is the bill you recommended. We will take it that way.

A. Yes.

XQ. 294. And as long as you have insisted upon having that in the record, I am sure you will say, because you so testified before the committee, that that bill was an administration measure, will you not?

MR. ANDERSON: What is that?

XQ. 395. Wasn't it?

MR. ANDERSON: If your Honor please, I do not think that is a proper question here and I do not think it is one we should go into.

MR. KRESEL: I am not going into it, but your

Honor sees that he insisted on having it in the record.

MR. ANDERSON: An Act of Congress is simply an Act of Congress; it is not an administration act or anything else.

THE COURT: Colonel, do I recall correctly that part of your Bill in which you allege that Congress passed an act upon representations made to it solely for that purpose by Mr. Bradley?

MR. ANDERSON: Yes, sir.

THE COURT: How can you reconcile your present objection with that allegation?

MR. ANDERSON: In this way—that if counsel wish to have this witness say that he recommended the thing or that he was the only witness who appeared, I have not the slightest objection; but what was an administration measure is a conclusion, and the administration consists of the entire Executive part of the Government, and therefore I have never averred and would not aver that the thing was an administration measure.

THE COURT: And therefore that calls for a conclusion of fact?

MR. ANDERSON: It calls for a conclusion, and in addition to that calls for the action of the entire Executive Department. Any specific act of a specific person is a fact.

THE COURT: There can be such a thing, I take it, as an administrative measure, can there not, Colonel Anderson?

MR. ANDERSON: I am frank to confess, your Honor, that I do not know that I could conceive of that description in America. It would be in England, because there it is the act of Parlia-

ment. But here the only person who can speak for an administration, whatever you may call that, is the President, perhaps in his official communications to Congress; and therefore he, not being a member of Congress, could not state that. A bill is introduced by a Senator or Congressman and passed as an act of Congress. There might be some definite interpretation of that in England, but not in this country.

Mr. Kresel: This witness's time is short, your Honor, and all I am asking him is this:

XQ. 296. Did you not testify before this committee when you were urging the passing of this bill which you say you were recommending, that it was not only you that was urging it but that it was an administration.

A. Yes, sir.

XQ. 297. Surely you are not ashamed of that, are you?

A. I am certainly not ashamed of it.

XQ. 298. Then I will come back to my original question. And at page 33 of your testimony before this committee you said, did you not: "Why, as trustee for the aliens, I want, of course, to see all their rights preserved"?

A. I conceived that to be my duty, yes.

XQ. 299. That is all right, I am not quarreling with your duty, I just want to get on the record what you said. And at page 34 you said this: "I have already indicated to you my personal view as to the situation that might be existing in connection with the Government suit against the Chemical Foundation, but as I have said I am a trustee for these people and the guardian of their property." "These people" were the Germans?

A. Austrians and Hungarians, whose property

was still in my possession. I wish you would read that portion which relates to the American claims, if you have time to do it.

XQ. 300. I do not know what portion you refer to, but I shall not object to Colonel Anderson reading in anything he wishes of what you said, because I realize absolutely you are truthful about it.

A. I think the Bill is a life saver for the American Claims situation.

XQ. 301. Yes, I quite understand that that is your belief. At page 74 before this committee you testified as follows: "Just at that point, Mr. Chairman, it might be interesting for me to say to the committee that as the common law trustee for the enemy interests in all this property I have, since I took over the office, contemplated bringing a friendly action in the courts, as trustee for these people, to determine whether the compensation of $100,000 and other considerations paid for these patents, was really a sufficient sum of money, but due to the whole patent situation I have not done so. To my mind it would be found that the compensation paid at the time was inadequate."

MR. ANDERSON: Would you mind saying to what patents that refers?

MR. KRESEL: Yes, I am coming to that.

XQ. 301. (Continued) There you were referring to the fifty-seven hundred odd patents that the Alien Property Custodian seized and conveyed to the War and Navy Departments, or as to which he gave a free license to the War and Navy Departments and released the Government from all claims for damages by reason of the infringement of those patents during the war upon the payment of $100,000 by the United States Government to the Alien Property Custodian?

MR. ANDERSON: If your Honor please, I am constrained to object to that question as an effort

to state the contents, meaning and intent of documents which are not in evidence in this case, and as to which the documents themselves are the best evidence. Any facts in connection with that matter which are deemed pertinent by the Court I should not object to, but I must respectfully urge an objection to the testimony as to documents, of that very far-reaching character, of which I personally or as counsel have no knowledge. I do not think he should undertake to state the legal effect, the number of patents, or what was done about them, without producing the record.

THE WITNESS: You do not want me to answer that?

MR. ANDERSON: No, not yet.

MR. KRESEL: No, because the Court has not ruled yet. If your Honor please, I am not asking the witness for the contents, I am simply asking him to identify the transaction.

THE COURT: I understand that you are not attempting to put a construction on the documents but merely use the language that you did to indicate the transaction referred to and identify it.

MR. KRESEL: Yes, sir, all I ask him is to identify it.

THE COURT: As I construe the question to mean that and that only, I will overrule the objection and let you discuss it at a later time.

MR. ANDERSON: And permit me to note an exception at this time.

THE COURT: Yes.

A. Those are my words, and it is bearing out my policy to keep this fund as large as possible as a guarantee against the final settlement of American claims against Germany. That was one of my actuating reasons.

MR. KRESEL: I ask that all the answer be stricken out except that portion of it wherein the witness says that was his language.

THE COURT: Strike out all of the answer after the words, "Those are my words."

XQ. 302. Colonel, all I am asking is whether what you were referring to there by that language is this patent transaction between the Alien Property Custodian and the War and Navy Departments?

A. Yes, sir.

XQ. 303. It had nothing to do with the Chemical Foundation patents?

A. No, sir.

MR. ANDERSON: I would like to get the record straight on that, because at some time this might become a question. I understand that counsel does not rely upon the statement upon the record or any answer of the witness in this matter as any evidence of the transaction between the War Department and the Alien Property Custodian, the assignment of the patents or the number of patents, or any matter of that kind. In other words, if that is relied upon as evidence, I respectfully ask that the best evidence be produced.

MR. KRESEL: The record, your Honor, will speak for itself. Whatever its effect is, the Court will give it that effect.

MR. ANDERSON: Perhaps I misunderstood the ruling.

THE COURT: I understand your position to be, Colonel Anderson, that if the purpose of the inquiry was other than to identify the subject matter of his statement, you object to it?

MR. ANDERSON: Very much, sir.

THE COURT: I do not understand that it is

offered to prove the fact, but only as identifying the subject matter of his statement before the committee.

MR. ANDERSON: I say any evidence of the transfer of patents or the consideration therefor, or any release of claims against the War Department or otherwise, any other matter relating to that which was in writing, we have to ask for the best evidence.

MR. KRESEL: Certainly. I will produce it in due time.

MR. ANDERSON: Very well.

MR. KRESEL: I will produce it.

XQ. 304. At page 15 of this record before the Winslow Committee you put into the record a statement which I shall show you, of the transfer of patents by the Alien Property Custodian to the United States, licenses issued on patents by the Custodian to the United States, re-transfers, etc., and now I will show it to you and ask you whether that is the statement, and whether that is correct (handing witness book)?

A. That is correct.

XQ. 305. Please read the first item there, if you will.

MR. ANDERSON: Will you let me see that before he answers?

MR. KRESEL: Yes, I will let Colonel Anderson see it first (handing counsel book).

MR. ANDERSON: As I have never seen those documents, though I do not wish to interrupt the examination at this point, I will object to the introduction of that evidence, which is merely an abstract of what was done by writing. I make that objection at this time so as to reserve the point and later on examination of the documents if I find that that is correct and that it does not re-

quire the production of the long documents, I will withdraw my objection.

MR. KRESEL: We can use it subject to correction. If this abstract which Colonel Miller put in evidence proves to be incorrect, of course we will correct the matter then.

MR. ANDERSON: Or incomplete.

MR. KRESEL: Or incomplete, certainly.

MR. ANDERSON: Therefore I object on that ground, with that understanding.

MR. KRESEL: The witness states that he prefers to go now, your Honor, and I am quite willing to suspend at this time.

THE COURT: Are both sides now through with the witness?

MR. KRESEL: I am not through with him, your Honor.

THE COURT: You want him to return?

MR. KRESEL: I do, sir.

MR. ANDERSON: I would not have put Colonel Miller on the stand except that we thought last night that both of us could get through with him. It may be that the Government will rest its case before he gets back and his further evidence is introduced, and therefore I would like to have the examination of Colonel Miller continued at this point and put into the record immediately following this. I do not know whether that could be done, but I do not want to have it appear in the defendant's case.

THE COURT: It may go in at this point.

MR. KRESEL: Will you be back Thursday, Colonel?

THE WITNESS: Yes, or on Friday—or Saturday, if you are sitting.

July 11, 1923.

THOMAS W. MILLER resumes the witness stand.

MR. KRESEL: Let the record show that the witness is being recalled for cross-examination which was interrupted by the witness's departure at a time when he was under examination.

CROSS-EXAMINATION (Continued).

By MR. KRESEL:

XQ. 306. Colonel Miller, the Treaty of Peace with Germany, about which you testified before the Winslow Committee—I am going to call it the Winslow Committee just as an abbreviation. It was the Committee on Interstate and Foreign Commerce of the House of Representatives—was made in July, 1921, was it not?

A. No, sir. My appearance, that I assume you refer to, was in June, 1921, before the House Committee on Foreign Affairs in connection with the then pending Knox-Porter Peace Resolution.

XQ. 307. No, I was not referring to that. I was referring to your appearance before the Winslow Committee.

A. The first appearance before the Winslow Committee was in December, 1922, and January, 1923.

XQ. 308. I am glad to have the dates, but what I was trying to get was the date of the Peace Treaty. That was July, 1921, was it not?

A. Yes, sir; July 2, 1921.

XQ. 309. Since that time have you as Alien Property Custodian sold any property?

A. Yes, sir.

XQ. 310. Are you now making sales of property?

A. Yes, sir.

XQ. 311. Speaking of this German Treaty, you testified before the Winslow Committee as follows:

A. Pardon me, what page, please?

XQ. 312. Page 17, toward the bottom of the page:

"Mr. Miller. My personal opinion is that the Government does not at this time favor the immediate return of all of it."

That referred to enemy property in your possession, did it not?

A. Yes, sir.

XQ. 313. "Because of the very provisions that your Congress put in the Knox-Porter Peace Resolution to which I have referred." That is what I have termed the Treaty of July 2, 1921, is that right?

A. Yes, sir.

XQ. 314. "That contains the last official instructions that any of us have had from Congress and Congress makes the laws, namely, that this shall be retained by the Government until such time as the former enemy government shall respectively have made suitable provision for the satisfaction of all claims against these Governments. That is the last instruction we have in any law on the subject." You so testified?

A. Yes, sir.

XQ. 315. And that was true?

A. Yes, sir.

XQ. 316. In other words, you as Alien Property Custodian regarded it as the last instruction of Congress contained in that peace resolution that the enemy property in your possession should be retained by the Government until such time as the former enemy governments shall respectively have made suitable provision for the satisfaction of all claims against those Governments?

A. That is the way I so understood the language in the peace resolution.

XQ. 317. And have you so governed your conduct as Alien Property Custodian as to be in compliance with that edict of Congress? In other words, let me put it concretely: Have you retained all enemy property in your possession as directed by Congress until Germany and Austria should make provisions for the satisfaction of claims against them?

A. Unless there was a provision of law which required me to return a piece of property for which a claim was made.

XQ. 318. With that exception you have retained all such property?

A. I have retained all of the property that could not be returned under the then existing law or the amendments to the law passed since the date of this hearing.

XQ. 319. But you do say that, notwithstanding the treaty as contained in the Knox-Porter Peace Resolution, you have been selling enemy property?

A. Yes, sir, because—

XQ. 320. "Yes, sir," is an answer.

A. All right.

XQ. 321. You testified before this same committee that you are trustee for the German owners of the property that was taken over by the Alien Property Custodian, did you not?

A. Yes, in substance that was it, Mr. Kresel.

XQ. 322. Not only in substance, but in language did you not so testify?

A. Any language I used in there I stand by; yes, sir.

XQ. 323. Very well, let me direct your attention to your language.

A. What page, please?

XQ. 324. Please turn first to page 29, to about the middle of the page. You said as follows: "The Alien Property Custodian today in all these industrial

plants and corporations that he is operating stands in the shoes of a stockholder. He has seized and is holding that stock as a common law trustee or guardian." You so testified, did you not?

A. Yes, sir.

XQ. 325. Now turn to page 32 of the same record, to about the middle of the page: "I merely am a stockholder, and last June, previous to July 2, 1922, as trustee for the enemy I brought a great number of suits," etc. You so testified?

A. Yes, sir.

XQ. 326. Now, turning to page 33 of the same record, about the middle of the page, again you say "Why, as a Trustee for the aliens, I want of course to see all their rights preserved." You so testified, did you not?

A. Yes, sir.

XQ. 327. And then turn to your testimony before the sub-committee of the Committee on the Judiciary, You testified there, did you not, on the same Bill, the Winslow Bill?

A. In the Senate.

XQ. 328. Yes.

A. Yes, sir.

XQ. 329. At page 63 of that record you testified as follows, at the bottom of the page, the testimony given January 11, speaking of the Alien Property Custodian, "He also may administer this property as a common law trustee." Senator Cummings puts this question to you:

"A Trustee for whom?

"Mr. Miller. For the former enemy-owners." You so testified, did you not?

A. Yes, sir, if it is there.

XQ. 330. And then again at page 64 of this same record, Senator Cummings again puts the question to you:

"A trustee for the former enemy-owners."

"Mr. Miller. Yes, sir."

You so testified did you not?

A. Yes, sir.

XQ. 331. And when you verified this Bill of Complaint in the action of the United States against the Chemical Foundation, you were then a trustee for the enemy owners of this property, were you not?

A. I was a trustee, Mr. Kresel, as I construe it, under Section 12 of the Trading with the Enemy Act, which uses that very term that you have been referring to.

XQ. 332. Colonel, just listen to my question. When you signed and verified the Bill of Complaint in this action, you were then Trustee for the alien enemy owners of property in your possession, were you not?

MR. ANDERSON: One moment please. If your Honor please, I do not want to object to the examination, but I recognize that counsel can ask the witness what he understood, perhaps, of his position; but he testified about his position and it may have a bearing; but I respectfully suggest that the question of what was the position of the Alien Property Custodian under the law, is a question of law. What the witness may have understood, may or may not be evidence in that connection, and whether it is or not I am going to object to his saying, but whatever he understood his position—that was a position fixed by Statute and that alone can be determined by the Court, not what he thought.

MR. KRESEL: There is no doubt about the principle that Colonel Anderson is invoking.

MR. ANDERSON: Then the question is improper.

MR. KRESEL: Not at all. The question is not at all improper. On the contrary, the question is entirely proper.

XQ. 333. Colonel Miller, you understand that I am asking you to state whether on the day when you verified this bill of complaint you considered yourself as trustee for the enemy owners of this property? Did you or did you not?

THE COURT: The question being modified accordingly?

MR. KRESEL: Yes, sir.

A. If you want me to limit my answer, Mr. Kresel, to just a mere yes or no, I think it is due me that I have some opportunity to go at length into how I construed my position.

XQ. 334. Colonel, you will have every opportunity upon the re-direct examination, I am sure, to make your explanation. I should like you, if you can, to answer the question yes or no.

MR. ANDERSON: I wish to direct the Court's attention to the fact that while counsel can ask for a yes or no answer, the witness has a right to explain what he means by "yes" or "no," if it is necessary to make his answer complete, I think, even on cross-examination. I submit that for the decision of the Court.

MR. KRESEL: I do not think that the answer requires any explanation. He either did or did not consider himself to be a trustee for the enemy. I am perfectly willing to have him say one or the other.

THE COURT: If either an affirmative or negative answer can not be given unqualifiedly, the witness may state the qualification to such affirmative or negative answer; not his reasons and not his reasoning, but the modification or qualification of the answer that he may give.

XQ. 335. You understand, Colonel, the Court's ruling?

A. Yes, I so considered it under the provisions of Section 12 of the Trading with the Enemy Act.

XQ. 336. You verified the Bill of Complaint in this case, and as one of the grounds of complaint you set forth in the bill of complaint that the consideration paid by the Chemical Foundation for these patents was inadequate, did you not?

A. Yes, sir.

XQ. 337. So that you as trustee for the enemy owners of property are seeking to recover these patents, are you not?

A. Seeking to recover them for the custody of the Government.

XQ. 338. You are seeking to recover them, to have them turned back to you as Alien Property Custodian, are you not?

A. If the Government is successful that will be the result, sir.

XQ. 339. And that is what you are seeking in this action, is it not?

A. Yes, sir.

XQ. 340. And if recovered, you will hold them as trustee for the enemy owners, will you not?

MR. ANDERSON: I will have to note the further objection that how he will hold them is absolutely a question of law. The witness holds them under the Alien Property Act in his official capacity, I say again that while I do not think it is evidence, I am not going to object to his having the witness testify as to what he thinks his duties are under the Alien Property Act, although I can not see that that has any relation to this subject; but when it comes to asking him a direct question of how he will hold them, or what his duties are

under the Alien Property Act, then I think that is purely a question of law involving the construction of the Act, which alone the Court can determine.

THE COURT: Anything to say, Mr. Kresel?

MR. KRESEL: I will modify the question to see if I can meet the objection. I will withdraw the question.

XQ. 341. If the Gevernment is successful in this action and the patents here in question are turned back to you as Alien Property Custodian, you believe that you will be holding them as trustee for the alien enemies, do you not?

A. I will be holding them as Alien Property Custodian under the provision of the law and the treaty which states that this property shall be held until such time as Congress may determine the disposition thereof.

XQ. 342. And your construction is that you will hold them as trustee for the enemy owners, is it not? You have so testified.

A. Partially, Mr. Kresel.

XQ. 343. Why partially, in what way partially?

A. Because, sir, this property, the remaining property, is held under the provision of the Peace Treaty for the settlement of American claims; and I consider the Alien Property Custodian as also holding this property as a guarantee of claims against Germany when they are adjudicated by the Mixed Claims Tribunal.

XQ. 344. You will hold it then as a guarantee that the Germans will pay the claims and if paid, then the property goes back to the Germans, does it not?

A. If in the future the German claims can be satisfied without confiscating German property, yes. If this administration is in power, it will go back.

XQ. 345. That is what I thought. So that if the Government is successful in this suit and the patents are returned to you as Alien Property Custodian and the Germans pay the claims which are made against them, the patents will go back to the Germans?

A. If they have not expired; if the life of the patent has not expired.

XQ. 346. That is true, is it not?

A. It will be treated in the same category as any other alien property, that is in our office now.

XQ. 347. And they will go back to the Germans, will they not?

A. I cannot predict what action Congress is going to take, sir, in the future.

XQ. 348. You have just said, have you not, that you are holding this property only as a guarantee that the German claims will be paid. Now I say to you, if the German claims are paid, will they not go back to the Germans?

MR. ANDERSON: If your Honor please, we have gotten the views of the witness without objection. The terms under which this property is held are fixed by Act of Congress and by the Treaties and the Act of Congress expressly provides that the property shall be disposed of as Congress may direct.

Therefore, while I did not want to object to this evidence, except my general objection which applies to all of it, and I did not want to interrupt although I think the evidence is illegal in any event, and I have no objection except my general objection that it is immaterial, irrelevant and incompetent; yet I think that to press a question of law when it is fixed by Act of Congress, and asking a witness on the stand to undertake to construe an Act of Congress, is not legal and there-

fore I have to object to any further examination along that line.

MR. KRESEL: On the contrary, sir, I am not asking him to construe; I am asking his view as to what he considers his official duties demand.

THE COURT: I think the objection is well taken, Mr. Kresel, on two grounds, first that the objection as stated is valid and also because the witness has answered as I understand it, the identical questions only two or three questions back. If there is a distinct difference between this question and the one he answered about two questions back—

MR. KRESEL: If your Honor will permit the Stenographer to read those two or three questions:

THE COURT: Very well.

MR. KRESEL: Your Honor's recollection is probably better than mine on that, and if it is a fact I shall not press the question any further.

(XQ. 343 and XQ. 344, with the answers, read as recorded above.)

THE COURT: The last is the part.

MR. KRESEL: I am glad that your Honor directed my attention to that. I withdraw the last question.

XQ. 349. Speaking of yourself, in your official capacity, at page 21 of your testimony before this Committee, you testified under cross-examination by Congressman Hawes, at the bottom of page 21, as follows:

"Mr. Miller. As I told Mr. Rayburn a while ago, Mr. Hawes, that is a determination of policy that is absolutely up to Congress and the President or the State Department. I am the administrative officer and custodian. Personally I have not hesitated to say here today that the sooner

we are divorced from this alien-property business and it is cleaned up and out of the way the better it will be. Nobody will be better satisfied than I, but it will take longer than the time I can spare to do it.

"Mr. Hawes. Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible?

"Mr. Miller. Yes, sir."

Was that your testimony?

A. Yes, bearing in mind the American claim situation which I have dealt with in my testimony, in my answers to your questions. And may I interject there, this was the result of some parliamentary fencing before a Congressional Committee, and I was not sworn. I am endeavoring to give my testimony today bearing in mind I am under oath.

XQ. 350. You mean this statement I read to you, at the bottom of page 21, would have been different had you been under oath?

A. I would have qualified it, Mr. Kresel, as I told you today, bearing in mind the American claims situation.

XQ. 351. Let me put the question to you as it was put to you by Mr. Hawes: Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible? Will you answer that?

A. I think it should be returned as quickly as possible, when the American claims situation is adjudicated by the Mixed Claims Tribunal.

XQ. 352. At page 12 of this record, speaking of the way in which the property was being held as a guarantee, you testified as follows:

"And I want to reiterate again that when we

say guarantee we do not mean that we are to eventually confiscate a dollar of this property to pay claims."

You so testified?

A. Unless it was necessary to take the proceeds of this property to adjudicate the claims, if Germany was unable to pay the bill.

XQ. 353. When you say in this passage that I have just read to you "that when we say guarantee we do not mean," to whom did you refer by the plural personal pronoun "we"?

A. I am trying to find this in here, Mr. Kresel.

XQ. 354. I will point it out to you. (Indicating).

A. Oh, yes. "We" referred, editorially as it were, to the United States.

XQ. 355. And there is no question about it, Colonel, that this Winslow Bill that you were urging the passage of at the time you were giving this testimony, was as you termed it here, an administration measure.

MR. ANDERSON: One moment. If your Honor please, when that question was asked before I felt constrained to object. I do not understand that there is anything in the United States known as an administrative measure in the technical sense. The Executive Department of the Government, which is usually spoken of as the Administration, has no part in legislation, except the power of veto in the President, and therefore the question of Bills in Congress is purely a question for Congress. Therefore, I am constrained to object, that under our system of Government there is no such thing and can be no such thing as an Administrative Bill.

MR. KRESEL: I will withdraw the question.

XQ. 356. I direct your attention to your testimony at page 18 of this record and read to you from

the bottom of the page as follows: "Mr. Huddleston" —He was one of the representatives, was he not?

A. Yes, sir.

XQ. 356. (continuing) "Mr. Miller, I understood you to say that you thought this matter should be dealt with acording to a consistent policy of our Government. That is correct, isn't it?

"MR. MILLER: Yes, sir, Generally speaking.

"MR. HUDDLESTON: Then I assume that this Bill represents, as far as it goes, the present policy of our Government?

"MR. MILLER: I should say it represents the desire of the present administration, surrounded as they are by the provisions in the peace resolu- Did you give that testimony?

A. That is my language, and I could not express it better at this moment.

XQ. 357. It is true, is it not?

A. Yes, sir.

XQ. 358. That is true?

A. Yes.

XQ. 359. Now, I return to my preceding question, when you said at page 12, these words: "We say guarantee. We do not mean that we are to eventually confiscate a dollar of his property." To whom were you referring when you said "we"?

A. With whom? I should say I can not qualify it any better than I did a moment ago by saying we—the United States. Perhaps I was assuming too much to say that.

XQ. 360. Very well, all right. So you said, speaking for yourself as Alien Property Custodian at least —

A. Yes, sir.

XQ. 361. That it was not intended even though the claims were unsatisfied, to confiscate any of this property?

A. Oh, no, you can not read that—

XQ. 362. Do I misconstrue that?

A. You can not read that into my language, Mr. Kresel, in fairness to me.

XQ. 363. I do not want to read it in fairness or unfairness to you; but is that what you meant by that statement, or is it not?

A. No, sir, I did want to see American claims paid before the remaining property of my office was returned.

XQ. 364. I see. I understand you.

A. And I so stated it time and again.

XQ. 365. Upon the books of the Alien Property Custodian, how are the patents carried, I mean at what value?

MR. ANDERSON: What patents, would you mind saying?

MR. KRESEL: All patents, any patents.

A. The audit that was made by Lybrand, Ross and Montgomery.

XQ. 366. Now, Colonel, I did not ask about the audit, but I want you to answer my question, please.

A. As I recall it, Mr. Kresel—

MR. KRESEL: That is all I ask for.

THE WITNESS: One dollar.

THE COURT: Each or all?

THE WITNESS: Each one, sir.

MR. KRESEL: Each patent.

XQ. 366a. Now, the Winslow Bill had become a law, had it not?

A. Yes, sir.

XQ. 367. Subsequent to your giving this testimony from which I have just read?

A. Yes, sir.

XQ. 368. Now, I do not want now to stop to put in a copy thereof, but listen to me clearly and see whether I do not substantially state the terms thereof. The

provisions of the Bill are that out of every property belonging or taken over from an alien enemy, that you as Alien Property Custodian hold, whether it amounts to less than $10,000, or to more than $10,000, an amount up to $10,000 should be returned; is that not right?

A. Generally, yes, sir.

XQ. 369. Under that law, you have returned German patents, have you not?

A. No, sir.

XQ. 370. None at all?

A. I specifically directed that when any claim was filed covering the return of a patent, that it be referred to my patent section and taken up with me personally. There has to my knowledge, Mr. Kresel, been no application for the return of a patent so far.

XQ. 371. Do you say then that since the passage of the Winslow Bill, no patents had been returned by the Alien Property Custodian?

A. I will have to refer, Mr. Kresel, to my records, to swear to that, but they should not have been returned under the $10,000 return principle.

XQ. 372. Did you not return approximately 150 patents to Germans—now, I am not going to confine you to any period either subsequent to or prior to the enactment of the Winslow Bill?

A. Well, now, I do not know, sir, but at the danger of meeting with an objection from you, I would like to say this, and if it is not what you want in the testimony, you can strike it out. In considering the Winslow Bill the question came up as to the patent assigned or sold to The Chemical Foundation and the War and Navy Departments. I personally was in favor of having a provision in the law that would exempt them from any of the provisions of the $10,000 return bill.

A section was so drawn and came in from the Navy Department and the War Department. I con-

sidered that all patents not heretofore sold and assigned to those various agencies, the War and Navy Departments, or The Chemical Foundation, were practically useless or they would have been applied for before for non-exclusive or exclusive license or purchase; and the patent section in the Winslow Bill was intentionally drawn so as not to prevent the divorcing from the books of my office of those so-called useless patents that had not already been sold or assigned to The Chemical Foundation or the War and Navy Departments.

Now, sir, as to whether my patent section and my law department has divorced itself of any of those patents, I will have to refer to the records of my office to ascertain the facts.

XQ. 373. At page 74 of this record, you testified as follows:

> "MR. MILLER: Just at that point, Mr. Chairman, it might be interesting for me to say to the Committee that as the common law trustee for the enemy interests in all this property I have, since I took over the office, contemplated bringing a friendly action in the Courts, as trustee for these people,"—

"These people" means the enemies?

A. Yes, sir.

XQ. 373. (continuing) "to determine whether the compensation of 100,000 and other considerations paid for these patents, was really a sufficient sum of money, but due to the whole patent situation I have not done so. To my mind it would be found that the compensation paid at the time was inadequate, but we must bear in mind that at that time we were at war and were seizing everything we had within our power to make war with, and I am considering this proposition on the assumption we are trying to clear up this matter on a peace time basis."

You so testified?

A. That is my language, sir.

XQ. 374. And that is true?

A. You mean what I say there is true?

XQ. 375. That was true, was it not?

A. Well, I believed it; yes, sir; or I would not have stated it. May I—

XQ. 376. Now, just preceding that statement made by you, you heard the statement made by Mr. Neagle. Who was Mr. Neagle?

A. He is the Solicitor of the Navy Department.

XQ. 377. And he was testifying before this same Committee with reference to the 5700 patents that were licensed by the Alien Property Custodian to the Navy and War Departments, was he not?

A. And in support of the same patent amendment that I referred to at some length in the previous answer.

XQ. 378. Mr. Neagle said as follows in your hearing:

> "I can probably give you a partial answer to that question. The negotiations on the part of the Navy Department—"

Those were the negotiations with reference to the 5700 patents that were licensed, were they not?

A. Yes, sir.

XQ. 378. (continued) "—were carried on by Commander Norton, who has since died, and I do not know that any record was made of it. So that it is very likely that so far as the Navy Department is concerned, it is not practicable to get that information." You heard him give that testimony?

A. Yes, sir.

XQ. 379. This license for 5,700 patents, Colonel Miller, is already in evidence, so I am not going to burden the record with a recital of all of its terms. But you know, do you not, that in substance that in-

strument licensed the Government to use certain 5,700 patents therein described and released the Government from all claims for damages for having infringed those patents during the war and that the Government paid the Alien Property Custodian as a consideration one hundred thousand dollars. That is your recollection?

A. I will take your statement as a fact, Mr. Kresel.

XQ. 380. Very well; thank you. Now, you were considering then as Alien Property Custodian to bring a suit to test the validity of that transaction because, as you have testified there, you thought the consideration of $100,000 was inadequate; is that right?

A. I don't want to answer you with just a plain "yes." You can strike this out if it does not suit you: Yes, partially. I am desirous of seeing the funds in the hands of the Alien Property Custodian as large as possible as a guarantee against the settlement of these claims, whether those funds are derived from other governmental agencies or not.

XQ. 381. In other words, one of the reasons that is actuating you in contemplating this suit against the Government is, as I understand you, to get into your possession so that you as Alien Property Custodian have it to meet these German claims, whether that money comes from the United States Treasury or no; is that it?

A. That is one of the controlling features, and you may strike this out if you do not like it—

XQ. 382. No, no, just answer my question.

A. Well, I must illustrate, sir.

XQ. 383. I will let you illustrate in a minute. Won't you please answer my question. That is one of the reasons?

A. Yes, sir.

XQ. 384. Now then, go ahead and illustrate it any way you want?

A. As, for instance, I am in a number of cases endeavoring to save very heavy assessments by the Internal Revenue Bureau of the Treasury Department against the trusts in my office, because I stand in the shoes of the enemy owners—stockholders, if you want to call them that— and I feel it is my duty to protect those trusts.

XQ. 385. Colonel, you testified about this license covering 5700 patents before this Committee; do you remember?

A. Yes, sir.

XQ. 386. And you will recall that you inserted in that record a statement with reference to this particular license and with reference to other assignments and sales of patents made by the Alien Property Custodian to the Government. Do you remember that?

A. Yes, sir.

XQ. 387. You will find it at the bottom of page 15 in that record. Now, I assume that in the discharge of your duties as trustee for the enemy owners you are considering bringing an action against the Government, not only to test the validity of the transaction with reference to the 5700 licensed patents, but also with reference to all other transfers of patents made by the Alien Property Custodian to the Government, are you not?

A. I can not say that I am, Mr. Kresel.

XQ. 388. You can not say?

A. No.

XQ. 389. That is an answer.

A. I meant—I am not evading anything—I do not think so.

XQ. 390. I do not charge you with evasion at all. Have you not considered in the discharge of your duties as trustee for the alien enemy owners whether the

consideration paid by the Government for the other assignments of patents was or was not adequate?

A. I presume, Mr. Kresel, if the matter that you are referring to—the 5700 patents for $100,000—is ever taken up, that they will all be followed up, but—

XQ. 391. All of them will be tested?

A. But without prejudicing any other government department. The matter is merely resting. Nothing has been done on it since the date of my testimony.

XQ. 392. Well, there is no secret about this feature of it, is there, Colonel, that you are resting because you are waiting to see the outcome of this suit?

A. I will have to refer you—

XQ. 393. Isn't that so? I am asking you as Alien Property Custodian, you who have the duty, as you say?

A. Well, if the Government should win this suit, it would of course give us a precedent to go by.

XQ. 394. Certainly; that is exactly what I thought.

A. (continuing) Covering this and all other sales.

XQ. 395. Yes, sir. By the way, as long as we are on that proposition, do you happen to be familiar with an opinion written by a man named Brown, a lawyer in Washington, with reference to the validity or invalidity of transfers by the Alien Property Custodian?

A. That is John Wilson Brown, third?

XQ. 396. Yes.

A. I do not take what he writes seriously, and I have not read it.

XQ. 397. Has it been brought to your attention?

A. If it had, I would not read it.

XQ. 398. Let me ask you this, and I shall not dwell on it, Colonel, except for this question: Do you not know that John Wilson Brown, third, wrote an opinion for his German clients wherein he pointed out

that the only way to attack these transfers of patents and other property made by the Alien Property Custodian was upon the question of the inadequacy of the consideration?

A. I will take your statement as a fact; but please do not link me up as an ally of Mr. Brown in any way.

XQ. 399. No, indeed; I would not make any such intimation. Now, when you were considering suing the United States Government to make it pay an adequate consideration for this license covering 5700 patents, did you take the trouble to examine that license and to see what patents it covered?

A. I have read that, Mr. Kresel,—

XQ. 400. All right.

A. And—

XQ. 401. That is all I wanted to know, if you have read it. And is it the fact that that license covers patents for mobile guns, sights for guns, cartridges for ordnance, gun carriages, explosive projectiles, percussion fuses for shells, field guns, trigger mechanisms, automatic firing devices, and similar military apparatus?

A. I am familiar with that situation, because—

XQ. 402. And is that the fact, that that license does cover patents embracing those subjects?

A. Yes, and I do not countenance the stealing of some of those patents from the War Department since the war started. I am familiar with that situation.

XQ. 403. I do not know what you are referring to; but the only interest I have in that is, do you charge us with stealing them?

A. Oh, certainly not. I am referring to a situation that developed in connection with the discussion on the patent treaty with Germany last year.

XQ. 404. I know nothing about that, and I do not want to go into it.

A. I thought you did.

XQ. 405. No, I do not. And is it a fact, Colonel, that these 5700 licenses given by the Alien Property Custodian on German patents, which you intend to challenge the validity of, covers patents on artificial eyes and artificial legs, surgical devices for setting fractured legs, inhalers, devices for lifting sick people in bed and moving them, manufacture of iodine preparations, cardiac trusses and other surgical instruments?

A. I will take that as your statement.

XQ. 406. No, I want your statement. Is it not the fact that that license does cover patents which embrace those subjects?

A. I must examine it again; but I will take your statement that that license covers those particular articles you read.

XQ. 407. So we have it, Colonel, that you, as trustee for the German former owners of these patents, intend to sue the United States Government to recover from the Government moneys for using during the war processes covering munitions and surgical instruments that were used by us during the war, because you consider $100,000 an inadequate consideration, and that you are waiting only for the bringing of that suit to see whether the Government wins this suit or no?

MR. ANDERSON: If your Honor please, I object to that question on the ground that it does not state correctly the witness's testimony. The witness was first read a statement by him from the evidence before the Committee, in which he said he had considered that question of whether a suit of that kind should be brought, and he said nothing had been done on it since he had testified. He has not said that he intended to bring any such suit at the present time, nor has he said that he was

awaiting the result of this suit. He said that he supposed this suit would be a precedent. If we are going to summarize the witness's testimony, it ought to be summarized correctly.

MR. KRESEL: I submit, your Honor, that I have truthfully stated this witness's testimony, and unless your Honor can see that I have not, I prefer to stand by the question as I have put it.

THE COURT: If you have misquoted or misinterpreted his testimony, the witness may point that out in his answer to the question.

(XQ. 407 repeated as above recorded.)

A. That is a double question and the answer is necessarily divisible. I must say, Mr. Kresel, you do not intentionally do so, but you ignore my continued statements that in addition to being a trustee for the enemy I have considered my office as a trustee with regard to the American claim situation. I need not elaborate on that. Secondly, the language used by me before the Winslow Committee is not necessarily going to be the policy of the Department of Justice or higher authority. If any such action is brought, of course, it must await the decision in this case, and if it is brought, it is brought, as far as I am concerned, if I am in office, for the purpose of clearing our records, and if an inadequate sum has been paid, to have the fund added to which is used as a guarantee of American claims against Germany.

XQ. 408. You were present before this Winslow Committee and heard the testimony of Mr. Neagle to the effect that the damages that would be claimed against the Government for the use of these patents covered by the license for 5700 of them would run up into the hundreds of millions of dollars, did you not?

A. If Mr. Neagle said that, yes, sir, but I had no such figure in mind.

XQ. 409. I read to you from page 76 of Mr. Neagle's testimony:

"Mr. Neagle. For the use by the Government of their patents. I should like to give you an illustration with reference to that. In the case of radio patents"—

You remember those were conveyed by the Alien Property Custodian to the Government, do you not?

A. Yes, sir.

XQ. 409. (continued)

"In the case of radio patents that were used by the Government, the various inventors, and there were quite a large number of them, put in claims against the Government for millions and millions of dollars. I am ashamed to say what I remember it to be, but I think it was $300,000,000."

You remember that testimony?

A. It is in there, yes, sir.

XQ. 410. And do you not remember the testimony given by Colonel Hull, representing the War Department, before this very Committee before which you were testifying on the Winslow Bill; and I read from page 59. You know Colonel Hull, do you not?

A. I certainly do.

XQ. 411. I read from page 59 of this record the following testimony:

"Mr. Graham." He was one of the Congressmen, was he not?

A. Yes.

XQ. 412. "Mr. Graham. If I ask you any question you do not care to answer, you decline to do so. I do not want, of course,"—do you follow me?

A. Yes, sir.

XQ. 412. (continuing) "—to expose any military secrets, but in making high explosives, such as

were used during the war, you used German patents, did you not?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: Was there any high explosive that we used during the war in which you did not use a German patent?

"COLONEL HULL: I do not know, sir.

"MR. GRAHAM: Take picric acid, for instance; that uses a German patent, does it not?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: And the various high explosives that were used in shells probably used substances in which aliens had patent rights.

"COLONEL HULL: The explosives industry and the dye industry are pretty nearly synonymous terms.

"MR. GRAHAM: Absolutely; they come back to the same thing. Now, you take the process that was used at Muscle Shoals and that is used today, and in those processes, both the Haber process and the cyanamid process, you use alien patent rights, don't you?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: You can not get along without them, so far as your present knowledge is concerned, can you?

"COLONEL HULL: Well, we had to use them.

"MR. GRAHAM: And you are using them and used them all through the line of explosives and in connection with everything we made war with, did you not?

"COLONEL HULL: We had to.

"MR. GRAHAM: Suppose you could not have used them, what kind of shape would we have been in?

"COLONEL HULL: The question carries its own answer.

"MR. GRAHAM: So it was a matter of national preservation that we used those things, was it not?

"COLONEL HULL: Certainly.

"MR. GRAHAM: Now, then, the patents were granted originally as an act of grace by this Government, were they not?

"COLONEL HULL: Yes, sir.

"MR. GRAHAM: A patent right is a different proposition from the ownership of a horse or cow or $5 in the bank, is it not?

"COLONEL HULL: I think so, and so expressed myself this morning.

"MR. GRAHAM: Can not the same power that originally granted those patent rights take them away?

"COLONEL HULL: Or limit them; yes, sir.

"MR. GRAHAM: And there is not any question in anybody's mind that understands the situation today but what we ought to, is there?

"COLONEL HULL: That is the question I was submitting."

MR. ANDERSON: One minute, Mr. Kresel. If your Honor please, I wish to object to the reading of that testimony into the record, in the manner in which it has been done, if it is read in to ask the witness whether he heard it. I can not see the relevancy of any of this testimony; I can not see that it has anything to do with the case.

MR. KRESEL: Let me put my question. I have not put a question yet.

MR. ANDERSON: Yes, but you read the evidence on the record.

MR. KRESEL: Yes.

MR. ANDERSON: Go ahead and put the question.

MR. KRESEL: Now let me put the question.

MR. ANDERSON: Very well.

XQ. 412. (continued) It is the patents as to which Colonel Hull was testifying, as I have read to you, covered by this license given by the Alien Property Custodian to the Government, namely, the license for 5700 patents, as to which you say you were contemplating suing to set aside the transaction because the amount was inadequate; was that it?

MR. ANDERSON: Just one minute. I wish to note an objection to this evidence which I have not up to the present time felt it necessary to make.

THE COURT: I did not quite hear you Colonel.

MR. ANDERSON: Up to the present time I had not thought it necessary to make it. My throat is very bad, may it please your Honor. Therefore, I did not want to make it, because I thought it unnecessary. It is entirely immaterial to this inquiry what this witness may have desired to do or thought it best to do with respect to 5700 patents assigned to the Government of the United States by the Alien Property Custodian. They are not in evidence in this litigation.

Of course, there was no direct examination upon it, and this is, in effect, direct and making the witness his own. Therefore, all of this evidence is entirly foreign to any inquiry here. I suppose the policy of the Government of the United States with respect to its litigation is fixed by the President and the Attorney General, I suppose the policy of the Government with respect to its general welfare and National Defense is fixed by Congress, and therefore it is not a matter taken up in the way it is being taken up here.

Coming now to the specific testimony, the testimony of Colonel Hull, he appears, according to the statement of counsel as the representative of the War Department. Whoever Colonel Hull may be, he does not represent the Government of the United States in the sense of fixing its policy. Whatever his opinion on questions of law, which are the questions here involved, as to the rights to and the use of these patents, it is certainly not a matter of testimony.

If this witness heard this statement made, how can that affect the situation in the slightest, how can it affect the issues in this case in the slightest? Suppose this witness's view of the situation was right or was wrong, how can it affect the legal rights of the parties here in the slightest?

Suppose the witness had desired to bring a suit against the Government to recover more money for those patents which were assigned; suppose he had been right or wrong; how can that affect the interests of the Government of the United States here? Therefore, I respectfully object to all this testimony, and should have, perhaps, objected earlier, but I did not want to do it, but I specifically object to this question in that it undertakes to inject into the record, in addition to the general objection stated, injecting into the record the opinions of Colonel Hull given before a Congressional Committee, not under oath, Colonel Hull belonging to a Department of the Government to which the witness does not belong, and it not appearing here that Colonel Hull's expressions or views had the slightest bearing on the action of the Government of the United States and therefore it is pure hearsay.

THE COURT: Just a moment. Before you begin, Mr. Kresel, from now on, objections with respect to the admissibility of testimony, and the arguments thereon, will be restricted to three minutes on each side; so you are now placed under that rule. You may have three minutes.

MR. KRESEL: To begin with, your Honor the testimony that I have read of Colonel Hull, is not testimony of opinion at all. Colonel Anderson misunderstands the testimony that I have read, or did not follow it closely enough, because if he does

follow it closely he will see that Colonel Hull was testifying as to what the War Department was doing during the war, and was not giving any conclusion or any opinion.

Now as to its materiality. We must never get away from the fact that this complaint is based primarily upon a charge of conspiracy, omitting the question of monopoly altogether; and Colonel Anderson has reserved unto himself the right at any time, and upon the final arguments, to charge fraud and conspiracy against anybody, not only against those whom he has expressly named in his Bill, so that we must anticipate that the officers of the Government who are responsible for this transaction that is here being attacked, will be eventually charged with fraud in the transaction. Now, I ask in all fairness, whether those officers are not entitled to show to the Court that in their dealing with their own Government, they dealt and acted upon exactly the same principles that they acted upon in the transaction here involved; and when we have here a responsible official of the present Government, who before a Congressional Committee has stated, and states now, that he intends to attack the validity of one of those transactions, upon the ground that the consideration was inadequate, is it not proper for us to show the circumstances under which that transaction was made, so as to show the connection between that act of the officials that are responsible for the transaction here, attacked in the light of the other transactions? That is all, your Honor.

Mr. Anderson: I only want to say, sir, that Colonel Hull's testimony on that subject, if they wish it, the way to get it into evidence, is to call Colonel Hull, so that I may raise proper objections and cross-examine him.

MR. KRESEL: No. I have read that only to show the witness, and ask him whether or not that is the thing that he is talking about.

THE COURT: Will you read me the question, please.

(The question was repeated as follows: XQ. 412 (Continued) It is the patents as to which Colonel Hull was testifying, as I have read to you covered by this license given by the Alien Property Custodian to the Government, namely, the license for 5700 patents as to which you say you were contemplating suing to set aside the transaction if such amount was inadequate, was that it?)

MR. ANDERSON: Preceding that was the reading from the record. That is what I object to.

THE COURT: I understand. I do not see the relevancy of that, Mr. Kresel. I have not ruled on the question of relevancy in any instance; consequently, I shall not rule on that now, and it may be taken under the General Rule. My impression is that the question would not attempt to disclose facts which are relevant. If the testimony of Colonel Hull has any bearing upon the issues in this case, I take it that the relevancy would be to the issue of fraud and conspiracy raised by this Bill of Complaint. If it has that bearing, it seems to me it would be as to whether this witness was familiar with those facts as testified to by Colonel Hull, or had heard that testimony prior to the time be charged and swore to it, as verified by the Bill of Complaint—that might be relevant, but as the question now stands, I fail to see the relevancy.

MR. KRESEL: But, your Honor, I understood that the witness had said that he had heard the testimony, or I should not have proceeded with it. I will ask the witness—

XQ. 413. Having heard this testimony read now, Colonel Miller, is it not the fact that you were present and heard that testimony given by Colonel Hull?

A. Yes, sir.

THE COURT: It might have been that I have failed to make my thought clear. I may be wrong. I assume that this question will be a preliminary question—

MR. KRESEL: That is all, your Honor. I have done that in order to identify the thing that I am asking him about.

MR. ANDERSON: I wish to call your Honor's attention to the fact that this testimony was given four months after the Bill in this case was filed.

THE COURT: Is that true, Mr. Kresel?

MR. KRESEL: That is true, your Honor. It was given in January, 1923.

MR. ANDERSON: The Bill of Complaint was filed in September, 1922.

THE COURT: Then, is it relevant to the charge of conspiracy here, because it is continued to be pressed?

MR. KRESEL: Why, of course, your Honor, not only to be pressed but justified here in Court.

THE COURT: You may take the answer.

MR. KRESEL: Would you like to have the question re-read, or will you answer it?

THE WITNESS: No. Wait a minute—

A. (to XQ. 413) Yes, sir.

XQ. 414. Now, Colonel, I want to take up with you the two assignments to the Chemical Foundation that you signed. Those were drawn in your office, were they not?

A. Why certainly; any order that I sign is drawn in my office.

XQ. 415. Well, those were drawn in your office, were they not?

A. Yes, sir.

XQ. 416. And they were drawn by your employees?

A. Yes, sir.

XQ. 417. And they were drawn after conference with you?

A. Yes, sir. You—

XQ. 418. Do you want to add something?

A. I would prefer, if I may, to discuss the two assignments separately.

XQ. 419. I am going to take them up separately. When you signed each of those assignments, you knew that you were signing instruments conveying certain property to the Chemical Foundation, did you not?

A. Yes, sir.

XQ. 420. When you verified the bill in this action you knew of your own knowledge, did you not, the reasons that had actuated you in making each of those two assignments?

A. Do you want me to give those reasons?

XQ. 421. No, I am simply asking you whether you knew of your own knowledge when you signed this bill of complaint what reasons had actuated you in making those two assignments?

A. Yes; and I hope I may be permitted to state the reasons.

XQ. 422. In your bill, you allege on information and belief that the assignments were prepared by or at the instance and procurement of the defendant. Did you not know when you signed this bill whether these assignments had been prepared by or at the instance and procurement of the defendant?

A. Mr. Kresel, I can not elaborate in any answer I may give in the future any more than I have already told you about the circumstances surrounding my signing of that bill.

XQ. 423. When you verified the bill, did you not

ow of your own knowledge what the facts were in matter of the making of these two assignments?

A. I knew, Mr. Kresel—

XQ. 424. Didn't you?

A. —that the Norma—

XQ. 425. Well, didn't you know the facts? I am ning to the facts. Didn't you know them? You in't have to have somebody tell you what they were, d you?

A. Why, yes; any Government official that runs an ice the size of mine has to rely on his subordinates.

XQ. 426. You misunderstand my question. When u signed this bill of complaint didn't you know of ur own knowledge, without anybody telling you, all the facts surrounding the making of those two assignments when you made them?

A. I thought I did, sir, yes.

XQ. 427. Now, you say in this bill of complaint, information and belief, that you executed the assignments without knowledge of the facts herein set rth and other necessary and essential facts; is that ue?

A. At the time I signed them I thought it was rfectly all right to sign them.

XQ. 428. You do not get my question. In the bill complaint you say, on information and belief that u executed the assignments—I am talking now about e assignments and not the bill—without knowledge the facts herein set forth and other necessary and ssential facts; is that true?

A. I can not give you any more of a qualified answer than I have, Mr. Kresel.

XQ. 429. That is an answer. What are the facts at you were ignorant of when you executed these o assignments?

A. I wish you would discuss these assignments parately, because there are different circumstances.

XQ. 430. Take them separately. I am very glad

to do that. Take each of them separately. Take the first one. What are the facts that you were ignorant of when you signed that assignment?

A. It is very difficult to answer a negative question. May I answer it in a positive way?

XQ. 431. I beg your pardon, Colonel. I am not asking you a negative question.

A. You asked me what facts I was ignorant of. I can tell you what facts—

XQ. 432. Listen to me, please. You say in the bill of complaint that at the time you signed these assignments you did not know the facts; do you not?

A. That is in the bill, sir; yes.

XQ. 433. Now I am asking you to tell me what facts there were that you now say you did not know?

A. Well,—

THE COURT: You mean what facts were within his knowledge at the time he signed the bill and verified the bill, or now?

MR. KRESEL: Now.

THE COURT: That he did not know at the time he executed the assignment?

MR. KRESEL: Exactly.

XQ. 434. What facts are there that you know now or when you signed the bill of complaint that you did not know when you signed the assignment? Now, have I made it plain?

A. As your question, Mr. Kresel, concerns two different questions by me, I must discuss in my answer the two assignments separately.

XQ. 435. I wish you would.

A. I would not have signed the second assignment of November 1, 1921, had I known all of the information brought to me by my counsel, by the Department of Justice, at the time the Chemical Foundation suit came up. I would sign the first transaction of

April 27, 1921, over again and I have got no apologies for it and I criticize no one for bringing it to me.

XQ. 436. Now, then, Colonel, I am thankful to you for letting me disregard now the first assignment. We are going to assume now that the first assignment is all right, is it? You have no complaint to make?

A. I can not qualify what I have said any more than in my previous answer.

XQ. 437. I am sorry, but I shall have to press you, Colonel. In your complaint you say that the first assignment was unlawful and void. Do you now say that it was right and proper? You are the witness. I can not answer for you.

A. No, I do not permit that construction, Mr. Kresel, to be placed on my remarks.

XQ. 438. But you have just said that there is nothing wrong about it and if you had to do it over again, you would do it?

A. All right.

XQ. 439. Therefore, listen to my question. You say therefore, that as to that first assignment, you have no criticism to make of it?

A. I have no apologies to make for it.

XQ. 440. I did not ask you anything about apologies. Please listen to my question.

A. I am endeavoring to answer it.

THE COURT: Just a minute. Will you put another question, Mr. Kresel?

XQ. 441. As to the first assignment, therefore, the one of April, 1921, do you now say that it was a proper and valid assignment and that you have no criticism to make of it?

MR. ANDERSON: I object if your Honor please. The witness may say what he thinks and what he thought of the assignment. He can not say that it is a proper and valid assignment, because the

question of its validity is a question of law pure and simple.

MR. KRESEL: But he is the complainant, your Honor.

MR. ANDERSON: No, he is not. He is merely an officer of the Government who swore to the bill. The complainant here is the United States Government.

MR. KRESEL: He represents it in this suit.

MR. ANDERSON: Not at all. He merely verified the bill as an accountant might have verified a bill. He does not represent the Government in this suit. The Department of Justice represents the Government in this suit by direction of the President of the United States.

MR. KRESEL: That is a novel proposition, your Honor, that the person who verifies the bill is not at all responsible for it.

MR. ANDERSON: I did not say that. A person who verifies a bill can be asked as to knowledge of its contents, if that is of any desire, but I mean to say that the person who verifies the bill does not necessarily represent the complainant, especially where the complainant is the Government of the United States, because many of these bills are sworn to by various subordinate persons, by accountants who know the facts.

MR. KRESEL: What may be done in other matters I am not concerned with. We are here now in court, brought in here upon a bill that is signed by this officer of the Government and he is not an accountant or a clerk. He is an officer of the Government. Is it contended here that this gentleman can not speak for the Government as to this particular action?

MR. ANDERSON: I mean to say, this bill is signed by the District Attorney of the District

of Delaware and the Attorney General of the United States: By the United States, by the District Attorney, and by the Attorney General. It is verified by this witness who is supposed to have known more about the facts than other officers. The District Attorney and the Attorney General are the only two officers of the Government who are authorized to sign this bill under the law.

MR. KRESEL: Now, your Honor, is it not proper that the defendant should be apprised whether Colonel Miller can speak for the Government or no? I have got to leave that to your Honor's decision.

MR. ANDERSON: I will answer that.

MR. KRESEL: Pardon me a minute.

MR. ANDERSON: I thought you asked me a question.

MR. KRESEL: Don't get excited.

MR. ANDERSON: I am not getting excited.

MR. KRESEL: Is not the defendant entitled to be now apprised whether the Government still contends that this assignment that the witness has just spoken of, of April, 1921, is or is not a valid assignment? Do they still contend that it is invalid?

MR. ANDERSON: The Government of the United States contends that that assignment is invalid as represented by the Attorney General of the United States by direction of the President of the United States and will contend to the conclusion of this case that that assignment was absolutely invalid as a matter of law.

THE COURT: Will you refer to the paragraph in the bill to which you called the witness's attention a moment ago; that is, the allegation?

MR. KRESEL: Yes, your Honor.

XQ. 442. Colonel Miller, in the 39th paragraph of the bill of complaint, at page 53, I find the following allegation:

> "The said Francis P. Garvan resigned as Alien Property Custodian on the 12th day of March, 1921, and was succeeded in said office on said date by Thomas W. Miller, who thereafter, as Alien Property Custodian, executed and delivered to the defendant, The Chemical Foundation, Incorporated, two additional instruments of alleged sale, transfer, and assignment, as follows:
>
> "1. An instrument of alleged sale, assignment and transfer from Thomas W. Miller, Alien Property Custodian, to defendant, The Chemical Foundation Incorporated, dated the 27th day of April, 1921, purporting to sell, transfer, and assign to said defendant the patents and other rights mentioned and listed in Schedules A and B therewith, a true copy of said instrument, together with the accompanying schedule, is hereto annexed as Exhibit J and prayed to be read as a part hereof."

Now, please skip the next paragraph and I direct your attention to the succeeding paragraph on page 54, which reads as follows:

> "Complainant is informed, believes, and therefore avers that said instruments of alleged sale, assignment, and transfer were prepared by or at the instance and procurement of said defendant, The Chemical Foundation, Incorporated; that said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had

the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration, and especially said instrument of November 5, 1921, was made, executed and delivered without any consideration whatever; that said alleged sales, transfers, and assignments were otherwise irregular and contrary to law, and were and are in all respects null, void, and of no effect in law or equity."

Colonel Miller, you will notice that the last paragraph which I read to you, wherein it is alleged that certain assignments were null and void and of no effect in law or equity, covered the Assignment of April 27, 1921.

XQ. 443. That is the assignment with reference to which you have testified a little while ago and now say, as I understand you, that you have no criticism to make of it; that if you had to do it again, you would do it again and that no facts with respect thereto were withheld or suppressed from you. Now, am I right about that?

A. I would have sold the patents to the Norma Company through the Chemical Foundation, if I had to do it over again, bearing in mind the date and conditions existing between the Chemical Foundation and myself at that time. Now, if that is not what you want, please ask me another question, because I want to be understood on these two assignments.

XQ. 444. No, I do not think I will ask you another question. I will repeat my former question then as to the second assignment of November, 1921. I want to know what were the facts with reference to that, that you were ignorant of at the time that you signed that assignment of November, 1921?

A. Mr. Kresel, these paragraphs that you have been reading from pages 53, 54 and 55 concern two transactions by me as Custodian. I understand they

were included in the bill because my actions were open to attack by the Government as well as those by my predecessors in connection with the Chemical Foundation transaction.

The November 5th assignment, true, was prepared in accordance with my orders by the chief of my patent division at that time. I was desirous at that time of continuing the arrangement that I found in force between my office and the Chemical Foundation when I came into office. It was a routine procedure.

If a patent or trade-mark or a copyright or any other piece of property which is covered by this bill was to be sold, assigned or licensed exclusively or non-exclusively, it was done through the channel of the Chemical Foundation and I have no apologies, official or personal, to make for these two transactions.

But if the Department of Justice has seen fit to attack my actions in this bill, that I did execute this assignment without information that I now have, it was this information. I understand, and I did so understand at the time that the November 5th assignment was in my office awaiting the approval of my immediate predecessor before I took office; and it was not executed. I executed it under the assumption that the copyrights or trademarks covered in the November 5, 1921, assignment had not been legally transferred to the Chemical Foundation by my predecessor and American users of those copyrights or trade-marks were prevented from getting proper use of them. That was one of the reasons why I executed it, to cut red tape, if you want to call it that.

I did not know that it had been waiting for my predecessor's attention before he came into office. I would not have executed that, Mr. Kresel, if it were put before me today because of the question that has been raised by, I might term it, my associates in the Government in Washington, over this transaction. I

would most certainly execute the one of April 27, 1921, because I thought the Norma Company of America ought to have the right to use those particular patents. That is all I have to say.

XQ. 445. As I gather, Colonel, you executed this November, 1921, assignment because you felt that by reason of red tape, as you call it, American users who wanted to use these patents had not been able to, and you wanted to give them an opportunity to do so. Do I get that straight?

A. Those were the facts that were put up to me, yes, sir, as I recollect them, because of the validity of the previous assignment of the same copyrights to the Chemical Foundation.

MR. KRESEL: May I have that answer read?

(Answer to XQ. 445 read as above recorded.)

THE WITNESS: I mean the question of the validity.

XQ. 446. In other words you understood there was some question as to the validity of prior assignments of patents made by the Alien Property Custodian to the Chemical Foundation, and that you were making this assignment of November, 1921, to confirm and clear up the title to those prior assignments; is that it?

A. So that American users of these copyrights could use them legally.

XQ. 447. Yes.

A. And at that time, sir, the arrangement was still in force which utilized the Chemical Foundation as the channel between my office and all prospective purchasers of patents or licensees of patents.

XQ. 448. Therefore, the purpose that you had in mind in making this assignment of November, 1921, was to clear up any question of the validity of prior assignments made to the Chemical Foundation, so that any question of title should be removed and so

that Americans might use the processes without any question as to their right to do so; is that it?

A. I have answered your question more fully than I can by any other answer.

XQ. 449. Is that the statement that you want to make?

A. In substance that is what I want to convey to you and the Court.

XQ. 450. Colonel, I have listened to your explanation and have not interrupted, but I must say that you have not answered my question, and I repeat it: What were the facts which, if you had known them in November, 1921, would have induced you not to sign that instrument?

THE COURT: Do you mean what were the facts that had come to his attention prior to the signing of the bill?

MR. KRESEL: Prior to the signing of the bill, certainly, because I am drawing his attention to that.

THE COURT: Will you repeat that question, Mr. Kresel?

XQ. 451. What were the facts which came to your knowledge before you verified the bill of complaint herein which, if you had known in November, 1921, you would not have signed this assignment of November, 1921? Do you understand my question?

A. Yes, sir. Why, the bringing of this suit, which was brought at the direction of the President, upset what we might term the friendly relations existing between my office and the Chemical Foundation. And I certainly would not have executed the November 5, 1921, assignment had I known that the Chemical Foundation sale was going—

XQ. 452. The Chemical Foundation what?

A. (Continuing) That the Chemical Foundation sale was going to be questioned by the Department of Justice.

XQ. 453. Have you answered as fully as you want to?

A. I am answering you as fully as I know how. If there are any further facts you want to bring out—

XQ. 454. I do not want to interrupt you, but is that all you want to say in answer to that question?

A. Unless further questions develop the need of a further answer.

XQ. 455. You say in this paragraph that I have read to you that facts were withheld from you with intent and purpose to secure the execution by you of the aforesaid instrument. What facts were withheld and suppressed from you?

A. I cannot enumerate any facts at this time, Mr. Kresel.

XQ. 456. Can you enumerate anything in addition to what you have already enumerated?

A. Were this not on the witness stand I presume I could converse with you at length on this, but I cannot quite see that I can answer any more questions along your general line any more fully than I have.

XQ. 457. I beg your pardon, Colonel Miller; I want to be perfectly respectful to you. I am not asking you for anything general. My question is very specific. You say in your Bill that facts were withheld and suppressed from you. Can you not state what facts were withheld or suppressed from you?

A. I can not state any more facts in answer to your questions than I already have.

XQ. 458. Now, Colonel, you said upon your direct examination that you had never read the Executive order signed by Mr. Polk, and dated the 26th of February, 1919; do you remember that?

A. I remember your question and my answers.

XQ. 459. Not my questions; I beg your pardon. Those were Colonel Anderson's.

A. Did I say that I had never read them?

XQ. 460. That you had not read them at the time you had made these assignments.

A. I have not, no, sir.

XQ. 461. By what authority did you think you were making this assignment?

A. I was naturally making it under the authority of the grant of the Custodian by—

XQ. 462. That very Executive order?

A. By that very Executive order, yes.

XQ. 463. In other words, you were signing an instrument wherein you were reciting that by virtue of an Executive order, identifying it by the name of the person who signed it and the date thereof, you were making this assignment, and yet you say that you had not read it.

A. No, I could not read an Executive order, Mr. Kresel, covering every transaction involving fifty thousand trusts in that office of mine. I have no apologies to make for that. I was operating with the Chemical Foundation, as I have described to you several times, in accordance with the routine arrangement I found in force when I came into the office.

XQ. 464. Did you know the provisions of that Executive order under the authority of which you were signing this instrument, whether you had in fact read it or no?

A. These two assignments—pardon me—I could have sold or licensed the patents and trade-marks in these two assignments under the Executive order of the President permitting the Alien Property Custodian to sell property of the value of ten thousand dollars and under.

XQ. 465. Now, Colonel, I did not ask you that. My question was very specific, and that is: Did you know the provisions of Mr. Polk's order of February 26th, 1919, when you made these assignments, whether you had read that order or no?

A. Well, I certainly was familiar with them in a general way, but I could not know them specifically, because I have testified I have not read the order.

XQ. 466. You knew, did you not, that that was an Executive order signed by Mr. Polk, authorizing the transfer of German patents from the Alien Property Custodian to the Chemical Foundation?

A. I must confess, Mr. Kresel, as far as my recollection serves me, I did not know that the original order in the Chemical Foundation had been signed by Mr. Polk and not by President Woodrow Wilson, until the question of the validity of this sale arose.

XQ. 467. Whether you knew who had actually signed the order, did you not know that there had been an Executive order authorizing the sale of these patents to the Chemical Foundation and that it was under that very order that you were undertaking to make this conveyance?

A. I knew that there had been an order.

XQ. 468. I am going to show you this order of Mr. Polk's dated February 26th, 1919, and I am going to ask you to point out to the Court anything in that order which, if you had read it, would have induced you to decline to make either of those two assignments. (Hands paper).

A. At the time I executed the two assignments, no. At this time, for the reasons that I have explained in my previous answers, yes.

XQ. 468-a. I must confess I do not understand your answer.

A. All right, sir.

XQ. 469. Perhaps you did not understand my question. Shall I repeat it to you?

A. No; I will endeavor to give you the kind of an answer that you want then.

XQ. 470. I beg your pardon, it is not the kind of an answer I want; I want an answer to my question.

A. It is evidently unsatisfactory. On April 27th, or November 5th, 1921, had I read the Polk assignment referred to, I would have executed those two assignments.

XQ. 471. You would or would not?

A. I would. By reason of the developments since that date, terminating in the bringing of this suit—

XQ. 472. Pardon me a minute; you have answered my question.

A. All right; that suits me, then.

XQ. 473. You also testified on your direct that you had not read the charter of the Chemical Foundation at the time when you made these two assignments. Do you remember that?

A. I do.

XQ. 474. Now I am going to show you the charter of the Chemical Foundation and I am going to ask you to point out what there is in that charter which, if you had read it and had known at the time when you made the assignments, would have induced you to decline to make it?

A. I can only give you—

XQ. 475. Wait a minute; let me show you the charter.

A. I thought I would save time.

XQ. 476. Very well. Are you now familiar with it?

A. No, I will go through the form of looking at it.

XQ. 477. Are you now familiar with it?

A. Let me have it, please.

XQ. 478. You would like it; very well. I show you the charter, which is Exhibit B to the Bill, beginning at page 90 thereof. (Handing paper).

A. Had I been familiar in detail with the charter of the Chemical Foundation at the time I executed the assignments of April 27th and November 5th, 1921, at that time I would have executed the assignments.

XQ. 479. Colonel, on or about the 31st day of March, 1921, you had a talk with Mr. Garvan in your office in Washington, did you not?

A. Yes, sir.

XQ. 480. Was that the only talk that you had with Mr. Garvan at about that time with reference to the Chemical Foundation?

A. That was my first conversation with him of any character. Between then and July 2nd, 1921, Mr. Garvan and I met frequently. We did not discuss Chemical Foundation each time. We may have. But we had occasion to meet quite often.

XQ. 481. Particularly at the time of the conversation of the 31st of March, 1921, did not Mr. Garvan quite fully tell you about the Chemical Foundation and its purposes?

A. He couldn't have gone into exhaustive detail because we only had about thirty minutes; but we discussed the general chemical business in the United States as relating to these German patents, and I made no secret of the fact that I was naturally interested in an industry—an American industry—and I had a very pleasant and satisfactory conversation with him.

XQ. 482. From that talk, Colonel Miller, did you not learn that it was the purpose of the Chemical Foundation to issue non-exclusive licenses upon the patents held by them?

A. I don't know whether it was on that day that I learned that fact, but I was, of course, familiar with the fact on or about that time.

XQ. 483. Were you not familiar with the fact and did you not know at or about that time that the Chemical Foundation had given to the Government of the United States, or was about to give to it, a free license covering all the patents that had been transferred to it?

A. That developed undoubtedly in our discussion

as to the future relations between the Foundation and the Government.

XQ. 484. Did you not learn at that time, Colonel Miller, that the organization of the Chemical Foundation was such that the stockholders were confined to a return of 6 per cent on their investment?

A. These are the same questions that you asked me before, and I answered I presume so, because that is the only way I can answer them today.

XQ. 485. I am sorry if I am repeating. It is so long since I examined you before.

A. I know you asked me those questions.

XQ. 486. Very well, then, I shall not repeat them. The fact is that Mr. Garvan asked you to become interested in the Chemical Foundation, did he not?

A. Yes, sir.

XQ. 487. And the fact is that he told you that he wanted to get out, and wanted you to take his place, did he not?

A. As I recall it, he wanted me to go in as Vice-President, and I presume if I qualified properly, he wanted to get rid of the responsibility of being President.

XQ. 488. And he told you, did he not, at that time, whether in so many words, or in substance, that the reason he wanted you to become interested was because he felt that the Chemical Foundation could succeed only if it had the support of the Government, and that you were a part of the Government?

A. Generally speaking I am familiar with that phase of the discussion, but as to whether it was on that day or not, I do not know.

MR. KRESEL: That is all.

THE COURT: Any re-direct, Colonel Anderson?

MR. ANDERSON: Yes, sir. I think it will be short.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 489. Colonel Miller, did you read over the Bill in this case, before you verified it?

A. Yes, sir, I read it over.

RDQ. 490. With whom did you read it over?

A. I read it over by myself, and undoubtedly there were present Mr. W. W. Wilson, my general counsel, who has been associated with your Department in the framing of the Bill.

RDQ. 491. You say Judge Wilson your general counsel had been associated with the Department of Justice in framing this Bill?

A. Yes, sir.

RDQ. 492. Was that by your direction?

A. Yes, sir.

RDQ. 493. Did you discuss this Bill with the Attorney General before it was completed, personally?

A. I was present in a conference with the Department of Justice when the Attorney General, yourself, W. W. Wilson, and others, sometime between July 8, 1922, and the date the Bill was filed.

RDQ. 494. Did you prior to making the demand upon the Chemical Foundation for the restoration of these patents in accordance with the instructions of the President go over the facts of the situation with your general counsel?

A. In accordance with the instructions of the President, I directed my general counsel and his staff to co-operate with your Department in carrying out the orders of the President.

RDQ. 495. As I recall, the concluding paragraph in the letter of the President, directs you to act in the matter under the advice of the Attorney General; is that true?

A. Yes, sir.

RDQ. 496. Did you so act?

A. I endeavored to.

RDQ. 497. Did you read a proof of the Bill before it was finally completed, with your general counsel, Judge Wilson?

A. I had in my possession a proof of the Bill which I read. I can not at this time testify as to who was present with me when I read it.

RDQ. 498. At the time of the assignment of April 27, 1921, you had been in office, I think you said, about two months, had you not?

A. Yes, sir.

RDQ. 499. Had you had an opportunity to study at that time, the relations between the Chemical Foundation and the Alien Property Custodian's office?

A. Only in the general way that I have stated from the stand today.

RDQ. 500. Yes. You were asked on cross-examination, when you were formerly here, whether you had read the report of Mr. Palmer. Had you at that time read Chapter II on the Chemical situation?

A. No, sir.

RDQ. 501. You had not. Have you read Chapter II of Mr. Palmer's report?

A. I am certain I have not, Colonel Anderson. I have had to refer to that report naturally, but I can not swear that I have read the language that you refer to.

RDQ. 502. Had you had submitted to you before July 8, 1921, any data dealing with the relations between the Chemical Foundation and the Alien Property Custodian's office, on the sale and assignments of the patents here in controversy?

A. Only as would grow out of my conversation with Mr. Garvan, that has been commented upon heretofore.

RDQ. 503. I am speaking now of July, 1921?

A. Yes. Well, that is when I was in office.

RDQ. 504. Oh, I meant to say July, 1922, at the time of the bringing of this suit. In other words, the President directed a letter to you, as the record shows, of July 1, 1922, and you made a demand on the Chemical Foundation on July 8, 1922. Did you in the intervening time have the data submitted to you, or make any investigation of the records in relation to the transactions here in controversy?

A. I was in receipt of a memorandum from my Bureau of Law in accordance with my directions that they prepare to follow out the President's directions to me.

RDQ. 505. Did that memorandum review the records to you on the subject?

A. Briefly, yes, sir.

RDQ. 506. On your cross-examination the other day, you were asked something about a call on you by a Mr. Means. Can you now state about the time of that call, and what it was about; have you refreshed your memory on that subject?

A. I am glad you asked me that question, because when it was asked me the other day, I anticipated no such question, and was naturally very hazy with regard to that matter. I have since checked my records, and find that this man called on me on May 18, 1921. You will recall that I previously gave it as the fall of 1921, and that he did not ask me for anything in connection with the Chemical Foundation, but I did confer with him on the Bosch Magneto matter in accordance with my understanding that he was a representative, and a duly accredited one of the Department of Justice.

RDQ. 507. Did he so represent to you.

A. He did.

RDQ. 507-a. Have you ever had any conference with Mr. Means with regard to The Chemical Founda-

tion or the institution or prosecution of the present suit?

A. No, sir. I would like to qualify that a little more if I may.

RDQ. 508. All right, sir. Go ahead.

A. Being the head of the Department, that is concerned directly with this matter, I would certainly know if Means had had anything to do with regard to the Government side of this case, and he has not.

RDQ. 509. After the demand made by you upon the Chemical Foundation for the return of these patents, in July, 1922, was refused by the Chemical Foundation, did you then further take the matter up with your general counsel, Judge Wilson?

A. I directed him and his staff to co-operate with your department in carrying out the orders of the President, namely, that the suit be instituted with the advice and direction of the Department of Justice.

RDQ. 510. Did you verify this bill under advice of your general counsel Judge Wilson after reading it over?

A. Yes, and in addition the advice of yourself as the counsel for the Government.

RDQ. 511. Colonel Miller, there are one or two other matters in regard to your testimony before the Committee that I wanted to ask you about. I wanted to ask you if you ever refused to execute any assignment or any reassignment from the Chemical Foundation to you or instruments between the Alien Property Custodian and the Chemical Foundation?

A. I did.

RDQ. 512. You have just handed me a paper with certain correspondence attached which bears date the 11th day of April, 1922. It is signed by Francis P. Garvan and there is a blank for the signature of the Alien Property Custodian, and it is headed "Release by The Chemical Foundation, Inc., to the Alien Prop-

erty Custodian, of all its right, title and interest in and to certain patents and trademarks." Were you asked to sign that instrument?

A. Yes, sir.

RDQ. 513. Did you decline to sign it?

A. Upon the advice of my general counsel I held it in abeyance.

MR. ANDERSON: Mr. Kresel, I would like to put that in evidence, and I think the whole correspondence should fairly go in if any.

MR. KRESEL: May I examine it?

MR. ANDERSON: You may, and I will go ahead at the present time with the examination of the witness and offer that after counsel has a chance to look at it.

RDQ. 514. Colonel Miller, I will ask you to state under what circumstances you gave the testimony which has been referred to a number of times by counsel in examination, before the Winslow Committee—what was then up?

A. The question arose as to the advisability of the Alien Property Custodian further administering or retaining in his possession the smaller trusts in the office. Ninety-three per cent—

MR. KRESEL: I do not like to interrupt and I have not up to the present; but that is not responsive to the question. The question is what was up before the committee. It was some bill, was it not?

MR. ANDERSON: I think I have a right to ask the witness the circumstances under which he gave this testimony. I will make it as short as possible.

THE COURT: Your objection is that the answer is not responsive?

MR. KRESEL: Not responsive. He was asked what was up before the committee and he is going into a long history.

MR. ANDERSON: I think it was responsive, sir. I asked him for the circumstances. I want to have the circumstances in order that the evidence might be interpreted in the light of those circumstances.

THE COURT: Then go ahead.

THE WITNESS: I will endeavor to be brief, but I can not—

THE COURT: Go ahead with your answer.

A. (continued). 93 per cent of the trusts in the office were of a value of $10,000 and under, and of an average value of $784. They were being uneconomically administered and at more expense to the Government than their continued retention would warrant.

MR. KRESEL: It seems to me, your Honor, that is going too far.

MR. ANDERSON: I think it is, and if you do not object to my leading I can shorten it.

MR. KRESEL: I have not ever objected to a question by you as leading, Colonel, and I shall not.

THE COURT: Is it your thought that that was responsive?

MR. ANDERSON: No, sir, and I am perfectly willing to have it stricken out. I think the fact that there were a number of small trusts in the office is responsive, but the uneconomical part I do not care anything about.

THE COURT: Would you like it all to stay in?

MR. ANDERSON: I would like it all to stay in simply because it is easier to do that than to strike out parts.

THE COURT: Very well.

RDQ. 515. I will ask you, Colonel, as I understand the committee had up the question of returning to the alien from whom this property had been taken or the then successor of such person the amounts of $10,000,

whether that was not in effect the Winslow Bill—whether it was not the effect of it?

A. That was one of the main general principles.

RDQ. 516. And the effect of that would be to get rid of a large proportion of these small trusts; is that correct?

A. Yes, sir.

RDQ. 517. Your evidence has been read in a number of instances with respect to the question of your trust relationship. Was it in that connection that you used the language which has been referred to in your testimony?

A. Section 12 of the Alien Property—

MR. KRESEL: May not that question be answered directly, your Honor?

THE COURT: Do you want the answer to that question, Colonel Anderson?

MR. ANDERSON: Yes, sir.

THE COURT: Then it may be read.

(RDQ. 517. Repeated as above recorded.)

THE WITNESS: What language, Colonel Anderson?

RDQ. 518. The language as to your being a trustee.

A. I was endeavoring to carry out my duty under the law, Section 12 of which specifically uses the words "common law trustee."

MR. ANDERSON: I would ask leave to introduce in evidence certain portions of Colonel Miller's testimony in order to complete as far as it can be done without introducing all of it, his statements on the various points that have been read. I would like to have until tomorrow morning to specify the parts, to the end that I may shorten it, as I have never had a chance to read this testimony on account of the pressure of other duties. If I had to

put it in now I would probly put in more than I would tomorrow morning, because I can check it up and make his statements complete overnight.

MR. KRESEL: I have no objection to Colonel Anderson reserving the right to make his offer tomorrow. I do not say that I shall not object to any such offer, but I have no objection to his reserving the right to do it.

MR. ANDERSON: With that understanding it is quite satisfactory. I shall try to shorten it and will renew the offer in the morning.

If your Honor please, Mr. Kresel wants to finish reading that correspondence. I will pick out this evidence and offer it in the morning. I do not think there will be half a dozen questions brought out by that, and but a few minutes will be taken in the morning. I think it will save time rather than to go over these papers now.

THE COURT: I have been just awaiting your convenience. The Court is adjourned until tomorrow morning at 8:30.

(Whereupon, at 3:40 o'clock Standard time, adjournment was taken until tomorrow, July 12, 1923, at 8:30 o'clock Standard Time.)

TWENTY-FIFTH DAY.

Wilmington, Delaware,
July 12th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:
HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

THOMAS W. MILLER, resumed the witness stand.

MR. ANDERSON: May it please the Court, there are one or two verbal corrections which the witness desires to make in his testimony of yesterday. At page 2173, in the answer at the bottom of the page, the witness said, "Seeking to recover them in the custody of the Government." He meant for the custody of the Government. The word "in" should be "for."

At page 2174, Question 343, there is clearly a typographical error, where the witness said in reply to a question "I consider the Alien Property Custodian as also holding thus"—which should obviously be "this property as a guarantee against claims against Germany." It should be "as a guarantee of claims against Germany." The word "against" is used there twice. He asks to correct that.

At page 2177, Question 351, the word "adjudicated" is used. I will ask the witness a question on that because I do not wish to substitute a word.

RE-DIRECT EXAMINATION (Continued).

By MR. ANDERSON:

RDQ. 519. Colonel Miller, referring to that evidence at page 2177 of yesterday, XQ. 351, you were asked by counsel: "Then am I correct in the assumption that your personal view is that this property should be returned as quickly as possible? Will you answer that?

A. I think it should be returned as quickly as possible, when the American claims situation is adjudicated by the Mixed Claims Tribunal."

You said you wished to explain what you meant by the word "adjudicated."

A. I meant in my answer to that question, when the claims were paid.

MR. ANDERSON: At page 2182, second line from the top of the page, the word "by" should be "or," so that it will read, "The War and Navy Departments or The Chemical Foundation."

THE WITNESS: There is one other correction at page 2207.

MR. ANEDRSON: Oh, yes. Next to the last line "because I thought the Norma Company of America ought to have the right to produce those particular patents" should be "ought to have the right to use those particular patents."

RDQ. 520. Colonel Miller, at various points in your evidence, you used the expression "these claims." I refer especially to page 2184, your reply to questions 380 and 381. Could you be a little more definite as to what you mean by "these claims?" The statement is ambiguous as it stands.

A. I mean by that language the claims of American citizens against Germany, Austria, or Hungary, for the loss of life and property at sea or damage to

their property when held by those Governments during the war.

MR. ANDERSON: On yesterday, if your Honor please, I stated that I would ask leave, in order to make complete Colonel Miller's statements before the Winslow Committee, without waiving my objection to that evidence, to put in additional statements related to the statements introduced. I have determined that I will only ask to insert in the record the statement on pages 4, 5 and 6 of this hearing before the Committee on Interstate and Foreign Commerce on which counsel examined Colonel Miller, yesterday. A part of that statement was read.

MR. KRESEL: Pages 4, 5 and 6?

MR. ANDERSON: Beginning at the middle of page 4 and down to the end of page 6. I will ask that that entire statement be put in as an exhibit.

MR. KRESEL: What is the purpose of that offer?

MR. ANDERSON: Simply to complete the statement of which you read a part on yesterday, so it will read as one consistent whole, and to show the circumstances under which the other statements were made.

MR. KRESEL: You are not offering it as proof of the facts, contained therein, are you?

MR. ANDERSON: Yes, I think it would go as proof of the facts contained therein, with the same effect as the statements introduced on yesterday would be proof of the facts.

MR. KRESEL: Of course, you recognize, Colonel, that there is a difference between admissions made by the witness on cross-examination and your right to introduce as direct testimony and

proof of facts a statement of this witness in this way. I object to that as not the proper way to do it. Moreover, if your Honor please, if this portion of the witness's testimony or statement before this Committee is to go in evidence, I shall ask leave to have inserted for the same purpose as the counsel is now offering that portion of the testimony, the entire testimony of this witness before this Committee.

MR. ANDERSON: In reply to the first part of counsel's statement, I would say that I understood that when Mr. Choate's and Mr. Garvan's statements were put in, it was done in the method which I have indicated. If I was mistaken in that, —I am not sure as to the record; I have not looked at it—I would offer it to show the circumstances under which Colonel Miller made these statements. If counsel desire, I would be very glad to ask the witness if he made those statements, reading the three pages indicated, or ask him if he has read them, and if they are true. Probably that would be better. As to the remainder of the statement, I would have to make the objection that I make to all this evidence. I am offering this additional testimony without waiving this objection that this hearing took place long subsequent to the filing of this Bill, and that it is entirely immaterial and irrelevant in this case and not proper evidence; but as part of it has gone in subject to the final ruling of the Court, I would put this in to abide the result of that ruling.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 630." *(See Exhibits, Vol. III, page 1507.)*

MR. ANDERSON: If your Honor will permit me, I will ask the witness this question:

RDQ. 521. Yesterday counsel on cross-examina-

tion asked you as to your testimony before the Committee on Interstate and Foreign Commerce on H. R. 13,496, taken in December, 1922, and January, 1923. Without waiving my objection to that evidence, I would like to ask you if you have read your statements at the beginning of that testimony, beginning on page 4 of the Hearing and going down to the bottom of page 6 of the Hearing?

A. I have read it, sir, yes.

RDQ. 522. Are the statements made by you on pages 4, 5 and 6, which I will not reread to you, correct to the best of your knowledge, information and belief?

MR. KRESEL: Just a minute, Colonel Miller. To that we object, your Honor, on the ground it is not competent for counsel upon re-direct to prove by his own witness any facts by way of showing that in another proceeding made a certain statement.

In that connection I desire to call attention to the fact that when Mr. Choate and Mr. Garvan were under examination and I sought to introduce a portion of their statements before various committees, in explanation of or in addition to such portions as Colonel Anderson had read upon their cross-examination, Colonel Anderson took the position that such testimony or statement was inadmissible under any circumstances, but that certainly it was not proof of the facts therein stated, and I think in answer to a question by the Court I stated that the evidence or the statement was not being offered as proof of the facts.

I understand Colonel Anderson now to be offering this portion of the witness's statement before the committee as proof of the facts.

That is not a consistent position for counsel

to take and, whether consistent or inconsistent, the objection that I make is that that is not the way to prove facts, namely, by showing that at some other place the witness had made certain statements. Moreover, your Honor has not indicated whether I will be permitted, as I desire to be permitted, to insert the balance of this witness's testimony, given upon the same subject and at the same time. I think if this portion goes in, whether it be proof of the facts or no, the balance should go in under the same conditions.

THE COURT: I will have to pass upon that last matter when you make the application.

MR. KRESEL: Very well.

THE COURT: The statement is not now offered as proof of facts, as I understand the situation; it is offered, and I said admitted. The question now is as to whether the statements therein made are true, which is testimony independent of the facts there given, and it can be brought out by a series of questions rather than by the single question, if objection is made on that point.

MR. ANDERSON: I do not know whether there is an answer to the question.

(RDQ. 522 repeated by the Stenographer.)

MR. ANDERSON: I will leave out all after the word "correct."

A. They are.

MR. ANDERSON: That is all. May it please the Court, on yesterday, I asked the witness as to this matter which I then handed to Mr. Kresel, if your Honor will recall, before I offer it in evidence. I wish to connect that.

MR. KRESEL: Page 2219 of the record.

RDQ. 523. On yesterday, you testified that you had declined to sign a certain paper, which I then identified. It is a re-assignment by The Chemical

Foundation, and is described in re-direct question 512, and you answered you declined to sign it upon the advice of general counsel and it was held in abeyance. Is this the paper which I now show you, to which you referred at that time? (Handing paper.)

A. Yes, sir.

MR. ANDERSON: If your Honor please, I would ask leave, counsel having examined these papers, to introduce the papers to which the witness refers in evidence as Plaintiff's Exhibit No. 631. In order to make the record complete, I would ask leave to introduce in connection therewith, the correspondence bearing thereon, to be read as Plaintiff's Exhibit No. 631-a to 631-n, if the Clerk can identify the letter.

MR. KRESEL: Before these documents are marked, we raise the objection that they are immaterial and irrelevant and are not competent evidence. Perhaps the Court ought to be informed as to these documents, and if you will permit me I will state their purpose, because I have examined them. The instrument in question is an instrument whereby The Chemical Foundation undertook to return to the Alien Property Custodian two certain patents. The instrument was executed by The Chemical Foundation and sent to Colonel Miller, as Alien Property Custodian, and he did not sign it. The correspondence which is offered as a part of the exhibit, is correspondence relating to this proposed re-assignment. Now, I do not see how either the correspondence or the un-executed instrument are material upon the issues here. It is not what this witness did not do as Alien Property Custodian, that is material; it is what he did do.

MR. ANDERSON: I just wish to state, if your Honor please, that on cross-examination, the wit-

ness was examined at very decided length as to acts which no doubt it will be contended were confirmatory of the acts mentioned here. This instrument is dated 11th day of April, 1922, and in the body of it undertakes to re-convey to the Alien Property Custodian two patents and then goes on to say "said instrument of confirmation and ratification bearing date March 1, 1921," which is a general confirmation by Mr. Garvan of all former conveyances, "shall so far as relates to said instrument of assignment of April 10, 1919, be construed to confirm said instrument of assignment of April 10, 1919, as thus amended," and so on. Now, the Alien Property Custodian refused some time before the bringing of this suit to sign that instrument presented to him by The Chemical Foundation by its President, purporting to confirm the instruments preceding, and on the cross-examination, I think that is a fair paper to put in with all the accompanying correspondence, for what it definitely means.

THE COURT: Was the assignment of November, 1921, a general confirmatory assignment?

MR. ANDERSON: March, 1921.

MR. KRESEL: No. The Court is right as to November, 1921, signed by Colonel Miller, we so construe it, your Honor. I should be very glad if your Honor would look at it now, and your Honor will recall the witness's testimony yesterday.

THE COURT: I recall the witness's testimony yesterday, and that was the impression I had of the interpretation and construction of the November, 1921, assignment. I want to see whether my recollection is correct. I think the objection is well taken. The paper may be marked under the general rule.

Paper received in evidence and marked "Plaintiff's Exhibit No. 631." *(See Exhibits, Vol. III, page 1514.)*

Correspondence received in evidence and marked "Plaintiff's Exhibit No. 631-a to 631-n," inclusive. *(See Exhibits, Vol. III, pages 1517-1530.)*

RDQ. 524. On yesterday, Colonel Miller, you stated that under the same circumstances as the sale of the so-called Norma Company of America in April, 1921, and under the same facts, you would have executed that assignment to the Norma Company. I refer to your evidence especially on page 2205. I would be very glad if you would state the circumstances as far as they are within your knowledge that led up to the execution of the assignment?

MR. KRESEL: Colonel, I object to that question because it does not correctly state the evidence of the witness to begin with. He did not state that this was a sale to the Norma Company or an assignment to the Norma Company. It was an assignment to The Chemical Foundation. Nor did he say that under the same circumstances, he would make a sale to the Norma Company. There is no sale to the Norma Company involved.

MR. ANDERSON: If that is your objection, Mr. Kresel, I withdraw the question and I will turn to the evidence.

RDQ. 525. At page 2205 of your testimony on yesterday, this question was asked you:

"That is the assignment with reference to which you have testified a little while ago and now say, as I understand you, that you have no criticism to make of it; that if you had to do it again, you would do it again and that no facts with respect thereto were withheld or suppressed from you. Now, am I right about that? A. I would have sold the patents to the Norma Company

through The Chemical Foundation, if I had to do it over again, bearing in mind the date and conditions existing between The Chemical Foundation and myself at that time. Now, if that is not what you want, please ask me another question, because I want to be understood on those two assignments."

Would you please state the conditions existing at that time to which you refe ; and if you have any correspondence on the subject, I will be glad to have you produce it.

MR. KRESEL: We object to the question, your Honor, unless it be shown that the conditions that the witness is about to disclose were conditions that were known to The Chemical Foundation. In other words, you can not impair the validity or the force of an instrument which conveys property rights to one of the parties by showing that there was some undisclosed reason in the mind of the vendor or the person that makes the conveyance. I do not know what evidence is sought to be disclosed here, but I must be careful and must make my objection in due time; and so we object upon the ground that it is immaterial and irrelevant as to what conditions were in the mind of this witness, unless such objections had been disclosed and were known to The Chemical Foundation at the time this conveyance was made.

THE COURT: And are first shown by the witness, before answering the question, to have been within the knowledge of the defendant?

MR. KRESEL: Yes, your Honor.

THE COURT: I think the objection is well taken. The answer may be received under our general rule.

RDQ. 526. Will you state the conditions?

MR. ANDERSON: I think his answer will prob-

ably disclose that the facts were known to The Chemical Foundation.

A. The date was April, 1921. The conditions were as follows: I found that the routine of the office existing at that time provided that all licensing, assignment or sale of patents would be through the channel of The Chemical Foundation and at that time The Chemical Foundation, its officers and my office and myself were proceeding under that procedure of routine. As I said yesterday, there had been no interruption of what I will term the friendly relations existing between The Chemical Foundation and my office and myself at that date, April, 1921. I think those facts were known to The Chemical Foundation, their officers and employees.

RDQ. 527. Then state the circumstances surrounding the assignment of these patents covered by the instrument of April 27th; what is within your knowledge of the subject or came to you officially?

A. A request was made by Mr. Nones, of the Norma Company, for the purchase or license of these patents.

MR. KRESEL: Pardon me, Colonel, if I interrupt you here.

We object, your Honor, to any further statement, especially as to statements made by third parties to this witness in the absence of the defendant, upon the ground that such statements are not binding upon the defendant and can not affect the validity of this instrument. Moreover, your Honor, we object upon the ground that this line of testimony is immaterial and irrelevant for this reason: As we understand the Bill of Complaint, it is not sought to set aside this particular assignment upon any ground other than that the assignment was made without a knowledge of the facts, and because certain facts were suppressed

from the witness, although the facts so suppressed are not disclosed in the Complaint, nor did the witness indicate them yesterday upon his examination. Now, that is the ground upon which the assignment is being attacked. If so, we are confined to an inquiry as to those grounds. The witness is now proceeding to state what conversations he had with third parties which led him to make this assignment.

THE COURT: There is no allegation that it was made by reason of the friendly relations between Colonel Miller and the officers of The Chemical Foundation?

MR. KRESEL: No, your Honor, not at all.

MR. ANDERSON: There is a statement in the Bill, I think, if your Honor please, that the assignment was otherwise illegal and void. That is, of course, a conclusion of law.

MR. KRESEL: It is a mere legal conclusion.

MR. ANDERSON: Counsel for the Government will, of course, insist that this assignment was unauthorized for reasons of law appearing from the face of the Bill. The witness having been cross-examined as to the circumstances here involved, I think he is entitled to show those circumstances, and I understand——

THE COURT: Do I understand, Colonel Anderson, that you are offering evidence in support of an allegation in your Bill, which allegation is a conclusion of law?

MR. ANDERSON: No, sir, I am offering evidence explaining the transaction as to which the witness was asked on yesterday.

THE COURT: What is the specific allegation to which the testimony now sought is directed?

MR. ANDERSON: The specific allegation to which this testimony is directed is that the facts

were not understood by this witness and that they were not in fact known to him at the time he executed this assignment, because the facts, as he understood them, were not the true facts.

THE COURT: I should like to ask you to turn to the Bill and point out the allegation to which this testimony relates.

MR. ANDERSON: I shall be very glad to do that, sir.

MR. KRESEL: Colonel, you will find the relevant portions at pages 54 and 55 of your Bill.

MR. ANDERSON: Thank you.

> "Complainant is informed, believes, and therefore avers that said instruments of alleged sale, assignment, and transfer were prepared by or at the instance and procurement of said defendant, The Chemical Foundation, Incorporated; that said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration, and especially said instrument of November 5, 1921, was made, executed, and delivered without any consideration whatever; that said alleged sales, transfers, and assignments were otherwise irregular and contrary to law, and were and are in all respects null, void, and of no effect in law or equity."

Then there is another later allegation.

THE COURT: That does not answer my question. I did not ask you for your general allega-

tions. I asked you for your specific allegation to which this testimony is directed, if you care to answer.

MR. ANDERSON: That is the allegation covering the thirty-ninth paragraph following the detailed description, and then the general allegation in the Bill as to the invalidity of all these assignments follows in a subsequent paragraph, but it probably does not enlarge that excepting in very general language.

THE COURT: Then, as I understand you, you do not care to answer the question which I asked you?

MR. ANDERSON: I have answered to the best of my ability, if your Honor please. If your Honor will make it more specific, I shall do my best. That is the allegation which I read.

THE COURT: The objection is well taken; but you may take the answer under the general rule.

A. An offer was made to me as Alien Property Custodian for the purchase or licensing of the eleven patents referred to in this assignment of April 27, 1921. The Norma Company of America, through its proper officers, desired these eleven patents to complete the purchase of the property which they had bought from my predecessor. They proved to my satisfaction that they should have had these patents when they bought the Norma Company originally, and my entire official interest in the whole transaction was merely the carrying out of my official desires, namely, that the Norma Company should be in possession or use of these eleven patents, which, by the way, deal with ball-bearings, and it was for that purpose that I directed that a paper which afterwards turned out to be this assignment of April 27, 1921, be drawn up by the proper official in my office carrying out the terms of the sale or the licensing of these patents to the Norma Company.

RDQ. 528. Who had charge of this matter in your office?

A. The chief of my Corporation Management Division, Mr. Paul Smith, is the officer to whom I gave these directions.

MR. KRESEL: Before you put another question, Colonel, in order to preserve our record I now move to strike out the answer to the last question on the ground it is immaterial, irrelevant and not binding.

THE COURT: I think the motion is well made, and if we were trying the case under the strict rules of evidence the motion would have to be granted. Under the general rule which we have adopted for this case, the motion will be denied.

MR. ANDERSON: Subject to your Honor's ruling, of course, I wish to offer in evidence some correspondence relative to the matters to which the witness just testified.

RDQ. 529. The correspondence which I now hold in my hand, and which you handed me, is the correspondence relative to the matters to which you have just testified?

A. Yes, sir, it is.

MR. ANDERSON: I now ask leave to offer in evidence the following correspondence upon this subject. Letter dated December 4, 1918, A. Mitchell Palmer to Henry B. McCormick, Esquire, 305 North Front Street, Harrisburg, Virginia.

MR. KRESEL: We object to the introduction of this letter, your Honor, upon the grounds that I urge to the testimony of the witness given in answers to the last few questions. Further, I object upon the ground that there is nothing in this letter to indicate that it refers to the transaction that the witness is testifying about, and I direct attention to the fact that this letter is dated De-

cember 4, 1918, antedating by two and a half years the advent of Colonel Miller as Alien Property Custodian. The evidence does not show that he knows anything about either the circumstances that gave rise to the writing of the letter or what it refers to.

RDQ. 530. Colonel Miller, was this letter taken from your official files in the office of the Alien Property Custodian, upon that subject (handing witness)?

A. Yes, sir; that is the photostat of a letter from my official files.

RDQ. 531. Was the endorsement "Norma Company of America" on it when it came into your possession?

A. Yes, sir; that is just as it came out of the files, as I found them in the office.

RDQ. 532. It came from the file on the subject of the Norma Company of America, did it?

A. Yes, sir.

MR. KRESEL: I contend, sir, that that is no proof. Simply because the instrument is entitled "Norma Company of America" is no proof that it has anything to do with this transaction.

By THE COURT:

Q. 533. When have you seen it, Colonel, do you recall?

A. Your Honor, I would have seen that letter in examining the file of the Norma Company in April, 1921; also in going over papers that would be transmitted to the Department of Justice in connection with the bringing of this action.

Q. 534. Have you any distinct and specific recollection of having seen it on either of those two occasions; and, if so, on which?

A. No, sir.

THE COURT: Do you press your offer?

MR. ANDERSON: Yes, sir.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 632." *(See Exhibits, Vol. III, page 1531.)*

MR. ANDERSON: I next offer in evidence a letter on the letter-head of Emery, Varney, Blair & Hoguet, signed by Mr. Varney, addressed to Lucien H. Boggs, Esq., dated March 15, 1920, as Plaintiff's Exhibit No. 633. Counsel has asked me to let him read the whole file before I offer any more. I shall be glad to do so with your Honor's permission.

MR. KRESEL: Now go ahead.

MR. ANDERSON: I understand you do not object to the authenticity of this?

MR. KRESEL: No. I have never raised that objection.

THE COURT: Its purpose is the same?

MR. ANDERSON: The same as the other correspondence in relation to the assignment of April——

THE COURT: That goes to show what?

MR. ANDERSON: I will read it, your Honor.

THE COURT: I do not mean the facts, but I mean it is directed toward what point?

MR. ANDERSON: It is directed to show the circumstances under which the assignment of April 27, 1921, which covered eleven patents on ball bearing appliances, which was assigned to The Chemical Foundation, and under which the Norma Company of America took a license, and it shows the accompanying circumstances as to that assignment.

THE COURT: Does your Bill seek to set aside that assignment?

MR. ANDERSON: Yes, sir.

THE COURT: And this correspondence is offered to show what?

MR. ANDERSON: To show that the facts and circumstances under which that assignment was made, that the witness was acting upon a mistaken conception of the facts when he made that assignment, as shown by the assignment and the accompanying correspondence.

MR. KRESEL: But that is not the allegation.

MR. ANDERSON: It will show all the circumstances surrounding the assignment which has been questioned.

THE COURT: I am not concerned with all the circumstances surrounding the assignment. I am concerned only with such facts and circumstances as will tend to support your allegation showing that the assignment was made under fraud, accident, mistake or conspiracy, and I do not understand that there are any other equitable grounds for setting aside, other than fraud, accident, mistake or conspiracy. Does this evidence now offered tend to show fraud, accident or mistake?

MR. ANDERSON: In my opinion, it tends to show a mistake, and a mistake of facts, upon which the Polk order was predicated.

THE COURT: And the mistake of fact was what? Was it a mutual mistake of material facts, or a mistake of fact on the part of the assignee, or on the part of the assignor, and if so, how was the mistake of fact on the part of the assignor induced?

MR. ANDERSON: The mistake of fact on which the officer acted, I think I can briefly state as follows: That the request had been made for an assignment to the Norma Company of America of these patents, on the idea that they were included in a prior sale as he has testified to. He turned

it over to his subordinates to prepare the necessary papers, believing them to be true. The Polk order, if valid——

THE COURT: Now, Colonel Anderson, I am not asking you a single thing about power. Power is entirely a different thing, and if there is any question as to the power of these people to make these assignments, that is one thing; but when I am asking for evidence with respect to fraud, accident or mistake, it is not an answer to tell me that there was a lack of power.

MR. ANDERSON: No, I am merely telling you that the Polk order undertook to authorize the assignment of property which related to the purposes and objects of The Chemical Foundation. Now, our contention is, as to this specific fact, that the witness at that time was not familiar with the Polk order, and that he was mistaken as to this being related——

THE COURT: Let us stop there. Is it your contention that the fact that the witness had failed to familiarize himself with the Polk order is sufficient ground in and of itself or in connection with other facts to enable the Government to ask the ground of fraud, accident, or mistake?
that this assignment of April 19th be set aside on

MR. ANDERSON: That is only one of a number or series of facts which I was trying to recite; and that therefore, the assignment of this matter to The Chemical Foundation, which was prepared by the Corporation Department and brought to the witness, was an assignment of matter which was made by an entire mistake of the character of stuff that could be assigned by the Alien Property Custodian to The Chemical Foundation and that it was made under a misunderstanding of the relations of The Chemical Foun-

dation to that office. That is as accurately as I can state it. If I introduce evidence that does not sustain the point, then of course, it will not have any value.

THE COURT: Have you alleged in the bill, as one of the equitable grounds for setting aside this assignment, any mistake on the part of Colonel Miller, any mistake of facts?

MR. ANDERSON: I have alleged a want of knowledge of the facts, which is a mistake of facts or misunderstanding of the facts.

MR. KRESEL: On the contrary, your Honor, may I read from page 54 of the bill:

> "That said Thomas W. Miller as Alien Property Custodian executed said instruments without knowledge of the facts herein set forth"——

That is, in the bill set forth; and there is nothing in this bill about any mistake about this particular assignment.

> "——and other necessary and essential facts in relation to the alleged sale, assignment, and transfer of said patents and other rights; that said facts were withheld from him with intent and purpose to secure the execution by him of the instruments aforesaid, which he would not have executed had the true facts been known to him; that said alleged sales, assignments, and transfers were without adequate consideration."

The charge here is not mistake. The charge is that facts were withheld from this witness.

MR. ANDERSON: That is not the whole charge. The first part of the charge relates expressly to a mistake of facts or a misunderstanding of facts.

MR. KRESEL: It says that he acted on the matter without knowledge of the facts herein. That is not a mistake of fact. And that he acted with-

out knowledge. How are we to be injured thereby, because he did not know what he was doing? How are we responsible for that? It is not charged that we misrepresented to him or that we withheld facts from him.

MR. ANDERSON: I have undertaken to state to your Honor as accurately as I could the theory on which I think this evidence is material.

THE COURT: I understand that and I think it has no bearing, that it is not binding in any way upon the defendant, and that it not only constitutes no ground for setting aside the assignment, but the evidence offered is no justification in any way. It may be put on the record under our general rule.

Letter dated March 15, 1920, last referred to, received in evidence and marked "Plaintiff's Exhibit No. 633." *(See Exhibits, Vol. III, page 1532.)*

MR. KRESEL: It is understood, is it, that all this correspondence which is now being offered is subject to the objection I raised to the first letter?

MR. ANDERSON: Certainly.

I offer in evidence letter of April 26, 1921, addressed to Colonel Miller by W. M. Nones, President of the Norma Company, to be identified and read in evidence as Plaintiff's Exhibit 634.

Received in evidence and marked "Plaintiff's Exhibit No. 634." *(See Exhibits, Vol. III, page 1533.)*

MR. ANDERSON: I offer in evidence letter dated March 23, 1920, addressed to Messrs. Emery, Varney, Blair & Hoguet, attention of L. E. Varney, signed Lucien H. Boggs, General Counsel, to be identified and read in evidence as Plaintiff's Exhibit 635.

Received in evidence and marked "Plaintiff's

Exhibit No. 635." *(See Exhibits, Vol. III, page 1535.)*

MR. ANDERSON: I offer in evidence a letter dated February 17, 1921, signed by Messrs. Emery, Varney, Blair & Hoguet, this being a copy. I suppose it will be admitted that it was signed by them. The signature is not on it.

MR. KRESEL: Yes.

MR. ANDERSON: Dated February 17, 1921, addressed to Mr. Paul Smith.

By MR. ANDERSON:

RDQ. 535. I believe you said Mr. Paul Smith was Chief of the Corporation Division of the Alien Property Custodian?

A. Yes, sir.

Received in evidence and marked "Plaintiff's Exhibit No. 636." *(See Exhibits, Vol. III, page 1536.)*

MR. ANDERSON: I offer in evidence letter addressed to the Alien Property Custodian, signed Kalish & Kalish, dated January 24, 1921, with respect to the patents in question.

Received in evidence and marked "Plaintiff's Exhibit No. 637." *(See Exhibits, Vol. III, page 1540.)*

RDQ. 536. Now, Colonel Miller, you have presented to me a memorandum dated the 4th of April, 1921. Do you recall a conference on about April 14, 1921, at your office, in regard to this matter?

A. Yes, sir.

RDQ. 537. Can you recall who was present at that conference or any of those persons present?

A. Mr. William M. Nones of the Norma Company of America, Mr. Paul Smith, and myself.

RDQ. 538. Can you say whether this is a memorandum presented to you at that time by Mr. Nones on this subject?

A. Yes, sir.

Mr. Anderson: I offer in evidence the memorandum which the witness has just identified, dated the 8th of April, 1921, to be identified and read in evidence as Plaintiff's Exhibit 638.

Mr. Kresel: In addition to the other objections that we have urged against the correspondence which has just been put in, we object upon the additional ground to this memorandum as a statement by a third party, namely, this man Nones, not at all official; it is not an expression of even an opinion by the Alien Property Custodian or any official act of his department, and is not binding upon the defendant.

The Court: I do not know of any rule of evidence under which it may be admitted, save under our general rule.

Received in evidence and marked "Plaintiff's Exhibit No. 638." *(See Exhibits, Vol. III, page 1541.)*

RDQ. 539. Colonel Miller, do you recall how the price named in this instrument of $550 for eleven patents was arrived at?

A. As near as I can recollect the general price of $50 per patent was the basis of the offer.

RDQ. 540. What do you mean by "general price?"

A. As I recall it, that was the average price agreed upon in the transaction. We were to accept fifty dollars a patent, which made a total of $550.

Mr. Anderson: I think that is all, if your Honor please, that I wish to ask the witness.

Re-Cross-Examination.

By Mr. Kresel:

RXQ. 541. Colonel Miller, as I understand your statement with reference to this Norma transaction, it

is this: that you wanted the Norma Company to have these patents and that you were using The Chemical Foundation simply as a conduit through which these patents might be transferred or a license given thereunder to the Norma Company; isn't that right?

A. Yes, and in accordance with the routine in my office at the time.

RXQ. 542. The Chemical Foundation did not ask you to transfer these to it, did they?

A. No, the initial request came through the Norma Company.

RXQ. 543. And before you signed this assignment you familiarized yourself with such facts as were available to you in this correspondence which has just been put in, the memorandum which Mr. Nones presented to you and the conferences that you had with him?

A. Oh, yes, I was familiar with the transaction.

RXQ. 544. You knew, did you not, that unless you had an Executive order authorizing you to dispose of these patents, you could not convey them either to The Chemical Foundation or to anybody else without putting them up at public auction?

A. The Executive order, Mr. Kresel——

RXQ. 545. Didn't you know that?

A. (continuing). ——is an Executive order providing that the Custodian can sell property of the value of $10,000 and under without a specific Executive order from the President.

RXQ. 546. Then in making this assignment you were acting under the Executive order made by the President authorizing the Custodian to sell any property at private sale if valued at less than $10,000?

A. Yes, sir.

RXQ. 547. I direct your attention to the assignment signed by you, page 480 of the Bill of Complaint, and ask you to read therefrom so much thereof as refers to the authority under which you were acting.

A. Well, according to that as I read it now, Mr. Kresel, it appears that the Norma Company transaction was made under the so-called Polk order. I am just glancing over it hastily. Is that what you want to bring out?

RXQ. 548. Yes, that is exactly what I want to bring out.

A. And I have just said, as far as my recollection serves me, that my selling of these patents to the Norma Company was in my mind under that Executive order of the President which permits the Alien Property Custodian to sell property of the value of $10,000 and under without additional Executive orders, and it appears from these pages which you have asked me to look at that the assignment which I signed was under the Polk order.

RXQ. 549. But, Colonel Miller, we can not know what was in your mind.

A. I am telling you now frankly.

RXQ. 550. Pardon me a minute. Do not let us talk together, or at the same time.

A. Pardon me.

RXQ. 551. Wait for my question. I say we can not tell what was in your mind; but the instrument that you signed shows, does it not, that you were making this assignment pursuant to the order signed by Mr. Polk, February 26, 1919?

A. There is no denial of that fact.

RXQ. 552. Isn't that right?

A. It is right there.

RXQ. 553. Surely at that time you knew what the Polk order provided, did you not?

A. I did not, sir. Mr. Kresel, I have endeavored to tell you and the Court in answer to all questions, as I said yesterday, that the detail of this original Executive order, the selling or assigning of these patents originally to The Chemical Foundation, the fact that

it had been signed by Frank L. Polk and not by President Woodrow Wilson, did not come to my attention as far as I recollect, until after this sale was questioned.

RXQ. 554. But, Colonel, I am not speaking about the name of the person who signed it, and I am not drawing that distinction now. Do you mean to say that you signed this instrument basing it upon the authority of that Executive order without knowing what it provided; is that what you want to say?

A. Mr. Kresel, if you want to read that construction into my testimony——

THE COURT: That will require a yes or no answer, Colonel Miller. If you want to explain it afterwards, you may, but it calls for yes or no.

THE WITNESS: May I have it stated again, your Honor?

(RXQ. 554 read as recorded above.)

A. Yes, but I would like to qualify my answer.

RXQ. 555. Now go ahead and qualify it.

A. I have endeavored to show that in the operation of my office it was necessary for me to act on a number of matters which I could not scrutinize personally and with great care, and, as I stated a moment ago in answer to Mr. Kresel's question, I was honestly of the opinion that the original sale of these patents to the Norma Company was executed under the authority of an Executive order other than the so-called Polk order.

RXQ. 556. Is that all you want to say about it? Because I want to give you every opportunity to say anything you like.

A. Unless you have further questions, sir.

RXQ. 557. When you made this assignment you did know that there was an Executive order authorizing the Alien Property Custodian to sell at private sale property valued at less than $10,000, did you not?

A. Yes, sir.

RXQ. 558. Had you read that Executive order?

A. That was in the——

RXQ. 559. Had you read it?

A. That was in the manual, the printed manual of the Alien Property Custodian's office.

RXQ. 560. Had you read it?

A. Why, certainly.

RXQ. 561. Do you mean that the order of Mr. Polk was not in the printed manual?

A. If it is, sir, I have not seen it there.

MR. KRESEL: It is in evidence as one of the plaintiff's exhibits.

RXQ. 562. Is this the book that you referred to? (Handing it to the witness.)

A. Yes, that is the one.

RXQ. 563. I direct your attention to the fact that the Polk order appears here in full at pages 92 and 93 of this book. (Handing it to the witness.) Do you see it?

A. Yes, I see it.

MR. KRESEL: What I was showing to the witness was Plaintiff's Exhibit No. 1—the book marked Plaintiff's Exhibit No. 1.

MR. GALLOWAY: I think Plaintiff's Exhibit No. 1 is only one order in that, Mr. Kresel.

MR. KRESEL: I mean the book in which Plaintiff's Exhibit No. 1 is contained.

RXQ. 564. Colonel, knowing that you had the authority as Alien Property Custodian to sell property at private sale if valued at less than $10,000, why did you not transfer these patents direct to the Norma Company under that authority?

A. I have said a number of times, Mr. Kresel, that I followed the routine procedure existent in my office at the time which, in connection with the sale and licensing of patents, trademarks, copyrights, etc., was

the use of The Chemical Foundation as the channel thereof.

RXQ. 565. You knew, did you not, that you had no authority to transfer to The Chemical Foundation anything that did not pertain to the purposes of that corporation?

A. If you ask me specifically at this date whether I knew that or not, I can not answer you. I, of course, know it now and have known it for some time past.

RXQ. 566. When you signed this instrument in April, 1919, did you not know that your authority to make transfers to The Chemical Foundation was circumscribed by that consideration?

A. I told you that I have no recollection of having read the so-called Polk Executive order.

RXQ. 567. But you did read this clause before you made the assignment, did you not, which I read from the assignment:

> "Whereas, I have determined that the Letters Patent of the United States and the applications for Letters Patent of the United States enumerated in Schedules A and B, hereto attached and made a part hereof, relate to the objects and purposes of the said The Chemical Foundation (Inc.) as expressed and defined in its charter?"

You certainly saw that, did you not?

A. I will not swear to that; and I will say further, if you will permit me, that my confidence in the man who brought it to me was sufficient to cause me to sign that assignment——

RXQ. 568. Without reading it?

A. Yes, sir. I have done that often, as many a public official is required to do in the execution of his duties. That is a well-known fact.

RXQ. 569. I am not concerned with that, Colonel. Do you now say you signed this instrument without reading it?

A. I am unable to answer your question specifically under oath.

RXQ. 570. Then I will put it in a different form. Did you read this instrument before you signed it?

A. I can not recall that I read it in its entirety.

RXQ. 571. In the clause that I have just read to you it is said that you as Alien Property Custodian determined that the patents in question related to the objects and purposes of The Chemical Foundation as expressed in its charter. Had you read its charter?

A. You know full well, Mr. Kresel, that public officials execute papers on the recommendations of their subordinates time and time again, and that was the way this was executed.

RXQ. 572. Having made that statement, will you answer my question? Had you read its charter at that time?

A. I testified a number of times heretofore no.

RXQ. 573. This assignment was made subsequent to your talk with Mr. Garvan, was it not?

A. Yes, sir.

RXQ. 574. From your talk with Mr. Garvan did you understand that ball bearings referred to the purposes and objects of The Chemical Foundation?

A. I don't think that detail ever came out in my conversation with Mr. Garvan.

RXQ. 575. These patents you knew when you made the assignment did cover a process of making ball bearings?

A. Yes, sir.

RXQ. 576. But one thing is certain, Colonel, isn't it—that before you signed the instrument you read the correspondence which Colonel Anderson put in in connection with this matter?

A. I certainly went over the file which included that correspondence.

RXQ. 577. In one of these letters put in by Colo-

nel Anderson, namely Plaintiff's Exhibit No. 634, which is a letter from Mr. Nones to yourself as Alien Property Custodian, dated April 26, 1921, a letter from you to him of the 23rd of April is referred to. Can you produce a copy of that letter?

A. Yes, sir; but not this morning. I will have to get it from my files.

RXQ. 578. I wish you would send it to Colonel Anderson.

A. May I make a note of that, then?

RXQ. 579. Yes, April 23rd, 1921, from yourself to Mr. Nones.

A. All right, sir, I will send that up.

RXQ. 580. You noticed, did you not, in this correspondence that some suggestion was made as to how much these patents should be sold for?

A. There must be. I have not read that recently, Mr. Kresel. If you want to examine me on that I would like the privilege of looking at it for a moment.

RXQ. 581. I will show it to you in a minute, but I am trying to test your recollection at present. Was there not some discussion between Mr. Nones and yourself with reference to how much should be paid for these patents?

A. Oh, undoubtedly so.

RXQ. 582. Mr. Nones made no payment to you for these patents, did he?

A. No. Not under the terms of the assignment.

RXQ. 583. Nor his company?

A. No.

RXQ. 584. The $550 which is recited as a consideration was paid to you by The Chemical Foundation?

A. Yes, sir.

RXQ. 585. But in your discussion with Mr. Nones, you do recall, do you not, the question of how much should be paid therefor was discussed?

A. It was undoubtedly discussed, Mr. Kresel.

RXQ. 586. Do you remember what was suggested as a consideration to be paid?

A. I can not unless I refer to the records.

RXQ. 587. Look at one of the letters put in by Colonel Anderson, Plaintiff's Exhibit No. 633, which is a letter from Mr. Varney to Mr. Boggs, in which, you see, Mr. Varney says:

> "Mr. Hoguet and I advised that in every such case, the purchaser be permitted to acquire, for a small sum, a naked license—a license which amounts simply to a waiver of suit thereunder—so that he will be immune from prosecution in the future under such patent or patents. As we left the matter, I understand that you were agreeable to this course and that you would take up the matter at once with the Custodian and fix the consideration for such a license. In my opinion, this should be paid as a lump sum and I think ten dollars per patent would be fair, reasonable and proper under all of the circumstances."

You were familiar with that at the time you made this assignment, were you not?

A. I can not testify today, Mr. Kresel, that that paragraph you have just read was paramount in my mind or had impressed itself upon me.

RXQ. 588. Well, did you have an appraisal made of the value of these patents?

A. No, sir, not that I can recall.

RXQ. 589. Did you have anybody advise you as to the relative value of each of these eleven patents?

A. I can not recall that I did.

RXQ. 590. You sold them at $50 apiece.

A. I presume, Mr. Kresel——

RXQ. 591. Did you not?

A. I presume, Mr. Kresel, that the amount of $50 apiece was probably derived from the general average upon the original sale of 4,500 patents to the Foundation, I presume so.

RXQ. 592. In other words, you, as Alien Property Custodian, if I understand you correctly, were making this transfer pursuant to the original arrangement that had been made for the transfer of all the other patents; is that what you want to say?

A. And in accordance with the routine procedure that I found in my office at that time.

RXQ. 593. And at the same price?

A. General average, yes.

RXQ. 594. Regardless of what the value was, insofar as you knew anything about it?

A. I was controlled, as I have told you, by the routine procedure I found in my office existing at that time between my office and The Chemical Foundation.

RXQ. 595. Now, when did you finally determine as Alien Property Custodian, that you were no longer controlled by the routine procedure?

A. The exact date, sir, I can not recall, but one moment——

RXQ. 596. Give it to me approximately as near as you can?

A. You know full well—I will answer it this way: With the possibility of a question in this sale, naturally, I was careful in my transactions, as is evidenced by the assignment put up to me in May, 1922, which was discussed here yesterday, and which I did not execute, upon the advice of my counsel.

RXQ. 597. So we have it that it was not until May, 1922, that you finally determined, as Alien Property Custodian, that you had to exercise independent judgment and discretion and that you were no longer bound by the routine that you found in your office regarding transactions between the Alien Property Custodian and The Chemical Foundation?

A. It was evidently around that time.

RXQ. 598. Now let me ask you, Colonel: Around that time, too, the question was being broached as to

attacking the sale to The Chemical Foundation, was it not?

A. It had been broached, as you know, in debates in Congress, in the newspapers, and from other quasi-public sources.

RXQ. 599. And you know, Colonel, that that is not what I am referring to. I say, about May, 1922, the Government, you as Alien Property Custodian, the Department of Justice, was bestirring itself to start this suit?

A. No, sir; I can not testify today that in that particular month or any particular day in that month of 1922 I had received any official or unofficial communication, written or verbal, on the bringing of this suit.

RXQ. 600. But was it not at or about the time when this suit was about to be broached that your dealings with The Chemical Foundation, as you have outlined them, changed?

A. I——

RXQ. 601. Now, frankly, isn't that so?

A. I may say this: In the spring——

RXQ. 602. Now, isn't that so?

A. Well, I have no objection to answering in the affirmative, if that will help you.

RXQ. 603. Then won't you please answer?

A. Yes.

RXQ. 604. And it was because of the impending action to set aside the sale to The Chemical Foundation, namely, this suit, that you declined to sign this reassignment of the two patents from The Chemical Foundation, was it not?

A. I can not elaborate any more than I have in my previous——

RXQ. 605. I am trying to fix the time, simply. It was about that time?

A. You can not fix by my testimony today any

specific date in the year 1922. I will have to refer to my memory and my records.

RXQ. 606. All right. Now, the instrument that you declined to sign was an instrument reassigning to the Alien Property Custodian two certain patents, was it not?

A. That is true.

RXQ. 607. In other words, The Chemical Foundation was offering to give back to you for no consideration whatsoever two certain patents, isn't that right?

A. Yes, sir.

RXQ. 608. And you declined to accept it, is that right?

A. Yes, sir.

RXQ. 609. At whose request was it that The Chemical Foundation was tendering the return of these two patents? Was it not at your request?

A. Mr. Kresel, I have not examined that file, and to answer it properly I will have to examine it.

MR. KRESEL: Mr. Clerk, let me have the correspondence that went into that, please?

THE WITNESS: I wish you would. That will answer the question.

RXQ. 610. I direct your attention to the first of this series of correspondence. It is addressed to The Chemical Foundation from your office, dated November 19, 1921, and reads as follows:

> "On examination of our records I find that patents Nos. 912,352 and 1,108,307 were assigned to The Chemical Foundation on April 10, 1919. They were also licensed to the Government on April 3, 1920, and they were sold along with other assets of the C. P. Goetz American Optical Company and assigned by the Custodian to Merton E. Grush, the purchaser of that company, under an assignment dated June 8, 1920.
>
> "Will you kindly take this matter up with Mr. Garvan and ask him for me if he will care to quitclaim these patents to Merton E. Grush?"

Does that refresh your recollection?

A. I will stand on anything that is in those records, Mr. Kresel.

RXQ. 611. Very well. Then do you not see that your office was asking The Chemical Foundation to quitclaim these two patents?

A. I won't deny that fact.

RXQ. 612. And your office having made that request of The Chemical Foundation, and The Chemical Foundation agreeing to it, sending you a form of assignment, you declined to accept it because this suit was about to be brought; is that it?

A. Because of what I have termed the change in the friendly relations existing between my office and the Foundation.

RXQ. 613. That is very good.

A. (No answer.)

MR. ANDERSON: I would like to call Mr. Dold now for cross-examination.

THE COURT: Do you withdraw the application that you put in the remainder of the testimony?

MR. KRESEL: No, your Honor. I was about to make it.

THE COURT: Are you through with Colonel Miller on both sides?

MR. KRESEL: I am through with my questions; yes, sir.

MR. ANDERSON: I am.

(Witness excused.)

MR. KRESEL: I now offer the balance of the testimony of Colonel Miller given before the Committee on Interstate and Foreign Commerce of the House of Representatives, which begins at the top of page 7 of this volume entitled, "Hearings before the Committee on Interstate and Foreign Commerce of the House of Representatives on H. R. 13496," extending therefrom to Page 43 of

this volume, and again, beginning at Page 74 of the same volume. There are only two answers on that page. Also at Page 83 of this volume, and Page 84. Also at Page 144 of this volume and 145. Also at Page 255 of this volume, extending to Page 258, and Pages 272 and 273.

THE COURT: Has it been testified that Colonel Miller so testified at that time? Is there any evidence that Colonel Miller gave that testimony before the Committee?

MR. KRESEL: Under our general stipulation, your Honor, it has been agreed between us that the fact that witnesses did so testify in these various proceedings is conceded. Am I correct, Colonel Anderson?

MR. ANDERSON: Without calling witnesses to prove that they did so testify?

MR. KRESEL: Yes.

MR. ANDERSON: I did not undertake to recall the exact language of the stipulation, but I think if Colonel Miller were called to the stand, he would say that that was a true transcript of his statement at that time. He was not under oath. That was a statement.

MR. KRESEL: Colonel, is that not our stipulation?

MR. ANDERSON: I do not recall the exact language and therefore I do not want to undertake to verbally state what the stipulation was. But I will not raise the question and will waive the necessity for calling Colonel Miller and having him say that he so testified before this committee, as to the statements contained in the record referring to him and attributable to Colonel Miller. There are many other statements by other persons in that transcript which I think are subject to objection.

MR. KRESEL: I am not offering the statements of anybody else. You understand that. I am offering only the statement of Colonel Miller.

THE COURT: What is the purpose, Mr. Kresel, of this offer?

MR. KRESEL: The purpose, your Honor, is so that your Honor will have before you not a partial disclosure of the testimony of this gentleman upon the one subject—and it is only one subject that he was discussing before this committee. Colonel Anderson has put in two pages of a statement made by Colonel Miller in his official capacity, which extends over the various pages that I have mentioned.

Such a partial disclosure is inadequate for your Honor to know and impossible for your Honor to judge the value of what Colonel Anderson has put in, without having before you the entire testimony.

MR. ANDERSON: I am constrained, with your Honor's permission, to object to the introduction of this evidence, waiving the formalities which I have indicated, first, because this testimony was first opened up on cross-examination and was therefore subject to all the objections which we are reserving, I understand, to all questions in this testimony.

Having thus been opened up on cross-examination, I felt that the statement made by the witness leading up to the details, and questions would explain the circumstances under which he gave the testimony, and I offered it in that connection, under the rule we have been heretofore proceeding under, as I understand it.

I do not think that that opens the situation up to further introduction of testimony by counsel. The only purpose of the introduction of testimony

by counsel could have been either for the purpose of impeachment or possibly an admission. I do not know whether an admission by an officer of the Government could be used against the Government, unless it was clearly within the scope of his authority.

Now for the purpose of impeachment, he must read the evidence to the witness, and ask direct questions on it, and give the witness an opportunity to explain. Therefore it would not come in under that ground, and it is not offered under that ground, so far as making the witness's statements complete, and he has not taken from the evidence what he desired to take from the evidence, that he can then put in all the evidence, and for the purpose of making the evidence complete. Therefore I do not think the objection is valid.

THE COURT: I do not recall whose testimony it was, but a more or less similar question came up. I do not know whether it was on the plaintiff's witness or the defendant's witness, where a statement was offered by Mr. Kresel, and you in the first place called for the remainder of the testimony and you then suggested that you consider it over night, and in the morning you offered only certain portions. Can you recall that incident?

MR. ANDERSON: Yes. That was Mr. Choate's evidence, and in the morning, I only offered evidence which in my view might have been offered originally, and I limitcd it to statements connected with that.

THE COURT: I think those were the circumstances.

MR. ANDERSON: And if it was some particular paragraph of which he read part of it here, I would object to the whole paragraph, and I do object to the entire evidence, and especially pertain-

ing to many matters which are entirely outside and irrelevant.

THE COURT: I do not think at the moment of a principle that would support this application as admissible evidence.

MR. KRESEL: Your Honor understands that I am not offering it as proof of the facts, as I understand, Colonel Anderson has limited his offer of the three pages in the same way.

THE COURT: No. Colonel Anderson proved by direct evidence that the acts therein stated were true, when that question was asked of Colonel Miller.

MR. KRESEL: I have forgotten that. I am not offering this as proof of the facts. I am offering it simply for whatever light it will throw upon so much of the record as Colonel Anderson has put in.

THE COURT: Purely for the purpose of interpretation, so to speak.

MR. KRESEL: Exactly.

THE COURT: It may be put in.

Received in evidence and marked "Defendant's Exhibit No. 167." *(See Exhibits, Vol. V, page 2885.)*

MR. ANDERSON: Perhaps I should say, in order that there may be no doubt, that if counsel offers the evidence of Colonel Miller, even for a limited purpose, we shall claim at the proper time, should we be so advised, the right to use that evidence, as introduced by counsel for any purpose that it can be used. What would be our legal rights in that situation I will not now undertake to say. There are so many questions here that I do not like to express an opinion on them, but I want to give notice to counsel to that effect when he introduces his evidence.

MR. KRESEL: We do not acquiesce in that. Our offer is limited to the purpose that I have indicated.

June 27, 1923.

Plaintiff next offers in evidence a letter from Ramsay Hoguet to Honorable A. Mitchell Palmer, Alien Property Custodian, dated February 4, 1919, and ask that the same be read in evidence as Plaintiff's Exhibit No. 448.

MR. KRESEL: May I see it, please?

(Mr. Galloway hands paper to Mr. Kresel.)

Received in evidence and marked "Plaintiff's Exhibit No. 448." (*See Exhibits, Vol. II, page 855.*)

MR. GALLOWAY: If your Honor please, this letter reads in part as follows:

MR. KRESEL: Will you follow the Court's suggestion and let me have those and I will hand them back to you just as fast as possible?

(Mr. Galloway hands papers to Mr. Kresel.)

MR. KRESEL: May I suggest that it is not necessary to read these letters, is it? The Court can not keep them in mind now.

MR. GALLOWAY: I think there are certain portions that we wish to bring to the attention of the Court as we go along that have not been previously brought out, and we shall omit as much as we possibly can.

THE COURT: You may do that if you wish, and the objections, with the consent of Mr. Kresel, may be reserved until the papers are all in. I will make my ruling after they are all in and not as we go along. That will save time and also the record. They may be marked as they are offered.

MR. GALLOWAY: I will not read this letter, your Honor, but will summarize it. It states that the Chemical Manufacturers' Association had ap-

proved the plan of the Dyes Institute for the acquisition of the German-owned patents in the chemical industry and were enthusiastic about it, and that appropriate resolutions had been passed, and that "The Committee advises us (Mr. Hoguet) that they expect to have the entire plan prepared and the certificate of incorporation of the new company drafted within a few days, and that in the meantime we are proceeding with all expedition to determine the title. My plan is to have the corporation formed and the principal patents conveyed to it within two or three weeks. I trust that we will be able to do it."

Plaintiff next offers in evidence a letter from Mr. F. E. Barrows to Mr. W. T. Gordon, dated March 4, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 449.

Received in evidence and marked "Plaintiff's Exhibit No. 449." (*See Exhibits, Vol. II, page 856.*)

MR. GALLOWAY: This letter, if your Honor please, merely states that it seems to Mr. Barrows that the investigation was made under such high pressure, that they should be congratulated on consummating it with such success.

Plaintiff next offers in evidence a letter from Mr. Gordon to Mr. Barrows, dated March 6, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 450.

Received in evidence and marked "Plaintiff's Exhibit No. 450." (Same as Plaintiff's Exhibit No. 74. *See Exhibits, Vol I, page 257.*)

MR. GALLOWAY: I will go ahead and summarize this and then hand it to counsel, to save time.

This letter, among other things, refers to the number of patents which they had been listing for seizure and sale, and that Mr. Hoguet had asked

Mr. Gordon how sure he was of having 100 per cent of the enemy-owned patents relating to chemistry and its allied industries, and that Mr. Hoguet had told Mr. Gordon that the Federal Trade list was followed as a basis for ordering these patents, and that other searches had been conducted, and that he felt sure.

Plaintiff next offers in evidence a letter dated March 10, 1919, from Mr. F. E. Barrows to Mr. W. T. Gordon, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 451.

Received in evidence and marked "Plaintiff's Exhibit No. 451." (Same as Plaintiff's Exhibit No. 76. *See Exhibits, Vol. I, page 258.*)

MR. GALLOWAY: This letter, among other things, refers to the question of how sure they were of getting the 100 per cent. of the enemy-owned patents on chemistry and allied industries, and states that "I would say that we had probably included from 90 to 95 per cent. of them," and that the additional five per cent. would be developed upon a further checking up; and he further states that he thinks the checking up should await the execution of the present assignment. That is the substance of that letter to which I wish to call your Honor's attention.

Plaintiff next offers in evidence a letter from Mr. Will T. Gordon to Mr. Ramsay Hoguet, dated March 11, 1919, along the same line as that just read or summarized.

Received in evidence and marked "Plaintiff's Exhibit No. 452." (*See Exhibits, Vol. II, page 858.*)

MR. GALLOWAY: Plaintiff offers in evidence a memorandum of a conference held January 13, 1919; present A. M. Palmer, Mr. Caton, Mr. Horne, Mr. Whitaker, Mr. Keohan, Mr. White-

more, Mr. Gordon, and Mr. Ferry. I ask that the same be read in evidence as Plaintiff's Exhibit No. 453.

Received in evidence and marked "Plaintiff's Exhibit No. 453." (*See Exhibits, Vol. II, page 859.*)

MR. GALLOWAY: This is only about a page, and is rather important, and I shall ask your Honor's indulgence while I read it. This is January 13, 1913, after the Executive order of December 3rd that you have heard about.

THE COURT: Yes.

(Mr. Galloway reads Plaintiff's Exhibit No. 453).

MR. GALLOWAY: Plaintiff next offers in evidence a letter from Mr. Ramsay Hoguet to Mansfield Ferry, dated January 17, 1919, acknowledging a receipt of a copy of the memorandum just previously read; and asks that the same may be read in evidence as Plaintiff's Exhibit No. 454.

Received in evidence and marked Plaintiff's Exhibit No. 454." (*See Exhibits, Vol. II, page 860.*)

MR. GALLOWAY: Plaintiff offers in evidence a letter dated February 4, 1919, from Ramsay Hoguet to Mansfield Ferry, referring to the conference on January 27th on dyes with the Alien Property Custodian. Among other things, he says:

"The proposition appears to be progressing very well, and we have today enlisted the support of another important body of chemical manufacturers."

Received in evidence and marked "Plaintiff's Exhibit No. 455." (*See Exhibits, Vol. II, page 861.*)

MR. GALLOWAY: Plaintiff now offers in evidence a letter dated March 24, 1919, from John Lotka, attorney for Ferdinand Max Eugen Blass, to the Alien Property Custodian. I might state,

for the information of your Honor, that this is another instance where property was sold to the Foundation after notice had been given of the claim of an American, or one not an enemy within the terms of the Trading with the Enemy Act, to be more specific, for such property; and ask that the same be read in evidence as Plaintiff's Exhibit No. 456."

Received in evidence and marked "Plaintiff's Exhibit No. 456." (*See Exhibits, Vol. II, page 862.*)

MR. KRESEL: Mr. Galloway, will your Honor permit me? I am trying to shorten this, if it is possible. Does this whole line of cross-examination that you have given me relate to this particular transaction?

MR. GALLOWAY: No, there are some two or three others.

MR. KRESEL: Would it not be possible for you to offer in bulk all of the correspondence relating to this transaction?

MR. GALLOWAY: I would be very glad to offer them in bulk. I do not know whether they can be offered in bulk, however, because there are many letters and I think they should be identified in some way. However, I do not care to read from them at all.

THE COURT: If they are put in together, it is not important whether they are under one number or a sequence of numbers; but it would be of service if, in examining the record, I find the exhibits with respect to any particular matter in sequence.

MR. KRESEL: I should say that, yes.

MR. GALLOWAY: Plaintiff offers in evidence 28 letters, constituting a series of correspondence concerning the seizure of patents owned by one Ferdinand Max Eugen Blass by the Alien Prop-

erty Custodian, and its subsequent sale to the Chemical Foundation, and the correspondence to and from Mr. Blass and his attorneys with reference to claiming such patent and attempting to get its return to him.

THE COURT: Now, then, can you without reading all those exhibits tell me the substance thereof? I want to save you reading them if I can.

MR. GALLOWAY: I shall be very glad to do so. I think I can do it in a general way. The substance of this correspondence is that after the seizure of the patent, but before its sale, Mr. Blass or his attorney wrote to the Custodian and claimed to be the owner thereof, claiming that he was not an enemy as defined by the Trading with the Enemy Act.

He received replies from the Custodian stating that the matter was being given consideration. The patent was then sold to The Chemical Foundation, Incorporated. He engaged in further correspondence with the Alien Property Custodian and was referred to The Chemical Foundation. The Chemical Foundation made various inquiries of him and at the last expressed, in a general way, the conclusion that his claim was proper; however, demanding the release from him of all claims against The Foundation or the Custodian. There was some difficulty and differences over these releases; but so far as this correspondence shows the releases were never executed and the patent has never been returned.

THE COURT: You state that as a fact but the correspondence does not show that.

MR. GALLOWAY: The correspondence does show that.

MR. KRESEL: Will your Honor permit me. I did not have an opportunity to examine the whole

correspondence. I am surprised that the Government should not put in the whole correspondence, which would show that the patents were reassigned to Mr. Blass. A further correction I desire to make is as to the statement of Mr. Galloway that prior to the sale notice of this man's claim was given to the Custodian.

The first letter which is now being offered in this connection is dated March 25, 1919. The sale to The Foundation was made about the 26th day of February, 1919, although the actual assignment was not executed until the 10th day of April, 1919.

MR. GALLOWAY: A lot of these patents were not even seized on the 26th of February.

MR. KRESEL: Pardon me, a minute, Mr. Galloway. That is going to be argued between you and me. I simply did not want your statement to go unchallenged on that subject.

I want to make a correction in the statement I have made. Mr. Garvan tells me the fact is they have not yet been returned. These patents have not yet been returned for the reasons which will be explained. I do not need to go into that.

THE COURT: The name of this person was what?

MR. GALLOWAY: Ferdinand Max Eugen Blass.

THE COURT: The patents cover what generally? I am trying to get the facts in my mind.

MR. GALLOWAY: I can not say off-hand. I do not recall. Do you recall what those patents referred to, Mr. Kresel?

THE COURT: It doesn't matter. I will try to recall it as the Blass incident.

MR. KRESEL: I think it is also proper to state that the correspondence shows the reasons for the seizure, namely, that the only record which the Alien Property Custodian could get as to the own-

ership of the patents was that contained in the records of the Patent Office, which showed that the person who owned them was a resident of Germany.

MR. GALLOWAY: In answer to that, I will state, your Honor, if we are going to engage in this discussion—

THE COURT: You need not do that.

MR. GALLOWAY: Another letter dated March 24th, which was before the sale, as we contend,—

MR. KRESEL: Before the assignment.

MR. GALLOWAY: Before the sale or assignment, as we shall contend, in which it states that Mr. Blass came to this country before August 1, 1914, and has resided in this country since he came here before August 1, 1914, to the present day.

Mr. Blass also writes that he has obtained his first naturalization papers from the United States District Court of New Jersey, under date of December 13, 1918, number 2811. "In view of these circumstances, it seems to me, the seizure of Mr. Blass's applications for patents (giving the number) may have been due to the erroneous impression caused by the statement of his old German residence in his application papers that he was actually residing in Germany."

THE COURT: It was the seizure of property of non-resident aliens, was it?

MR. KRESEL: No, your Honor, the complaint is that this was the seizure of the property of an alien but a resident in this country.

THE COURT: I mean, the Trading with the Enemy Act only authorized the seizure of property of non-resident aliens.

MR. KRESEL: Certainly. Mr. Galloway, is it your desire to mark them as one exhibit or as separate exhibits?

MR. GALLOWAY: Either way, so that they are on the record. It might be done as one exhibit.

MR. KRESEL: That would not be saving time. I think you better have a separate number for each one.

Letter dated March 24, 1919, signed by John Lotka, attorney for Ferdinand Max Eugen Blass, to Alien Property Custodian; received in evidence and marked "Plaintiff's Exhibit No. 456." (*See Exhibits, Vol. II, page 862.*)

Letter dated March 24, 1919, signed by John Lotka, attorney for Ferdinand Max Eugen Blass, to Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 457." (*See Exhibits, Vol. II, page 863.*)

Letter dated April 16th, 1919, signed by F. M. Eugen Blass, to The Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 458." (*See Exhibits, Vol. II, page 864.*)

Letter dated April 22, 1919, from Division of Patents, to John Lotka, received in evidence and marked "Plaintiff's Exhibit No. 459." (*See Exhibits, Vol. II, page 865.*)

Letter dated April 24, 1919, signed Ramsay Hoguet, to Mr. R. C. Goldstein, received in evidence and marked "Plaintiff's Exhibit No. 460." (*See Exhibits, Vol. II, page 866.*)

Letter dated May 3, 1919, signed by Robert C. Goldstein, Chief of Division, Division of Patents, received in evidence and marked "Plaintiff's Exhibit No. 461." (*See Exhibits, Vol. II, page 867.*)

Letter dated May 9th, 1919, signed by Eugen Blass, to The Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 462." (*See Exhibits, Vol. II, page 867.*)

Letter dated June 2, 1919, signed by Ramsay Hoguet, to Mr. Robert C. Goldstein, Division of

Patents, received in evidence and marked "Plaintiff's Exhibit No. 463." (*See Exhibits, Vol. II, page 868.*)

Letter dated June 18, 1919, signed by Robert C. Goldstein, Chief of Division, to Mr. F. M. Eugen Blass, received in evidence and marked "Plaintiff's Exhibit No. 464." (*See Exhibits, Vol. II, page 869.*)

Letter dated September 11, 1919, signed by H. E. Ahern, Director, Bureau of Trust, to Ramsay Houget, received in evidence and marked "Plaintiff's Exhibit No. 465." (*See Exhibits, Vol. II, page 870.*)

Letter dated September 13, 1919, signed by Ramsay Hoguet, to Mr. H. D. Ahern, Bureau of Trusts, Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 466." (*See Exhibits, Vol. II, page 871.*)

Letter dated October 29, 1920, signed by Ramsay Hoguet to Mr. Harry Caton, received in evidence and marked "Plaintiff's Exhibit No. 467." (*See Exhibits, Vol. II, page 873.*)

Copy of letter dated November 3, 1919, from F. M. Eugen Blass, "To the President," received in evidence and marked "Plaintiff's Exhibit No. 468." (*See Exhibits, Vol. II, page 874.*)

Copy of affidavit dated November 3, 1919, signed by F. M. Eugen Blass, received in evidence and marked "Plaintiff's Exhibit No. 469." (*See Exhibits, Vol. II, page 875.*)

Letter dated November 11, 1920, signed by Bureau of Trusts by Chas. B. Calvert, to F. M. Eugen Blass, received in evidence and marked "Plaintiff's Exhibit No. 470." (*See Exhibits, Vol. II, page 878.*)

Letter dated November 11, 1919, signed by Ramsay Hoguet to Mr. H. E. Ahern, received in

evidence and marked "Plaintiff's Exhibit No. 471." (*See Exhibits, Vol. II, page 880.*)

Letter dated November 13, 1919, from H. E. Ahern to F. M. Eugen Blass, received in evidence and marked "Plaintiff's Exhibit No. 472." (*See Exhibits, Vol. II, page 881.*)

Letter dated November 15, 1919, signed by Ramsay Hoguet, to Mr. H. E. Ahern, received in evidence and marked "Plaintiff's Exhibit No. 473." (*See Exhibits, Vol. II, page 882.*)

Letter dated November 22, 1920, signed by F. M. Eugen Blass to Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 474." (*See Exhibits, Vol. II, page 882.*)

Letter dated January 3, 1921, signed by Charles A. Dunham, on letterhead of Duell, Warfield & Duell, to Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 475." (*See Exhibits, Vol. II, page 884.*)

Letter dated January 5, 1921, addressed to Chemical Foundation, Inc., attention, Dr. L. Van Doren, received in evidence and marked "Plaintiff's Exhibit No. 476." (*See Exhibits, Vol. II, page 886.*)

Letter dated January 5, 1921, from "J. P. R. Z." Division of Records, to Duell, Warfield & Duell, received in evidence and marked "Plaintiff's Exhibit No. 477." (*See Exhibits, Vol. II, page 887.*)

Letter dated March 13, 1921, signed by F. M. Eugen Blass, to Thomas W. Miller, Esq., Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 478." (*See Exhibits, Vol. II, page 887.*)

Letter dated March 17th, 1921, signed by Charles B. Calvert, Bureau of Trusts, to Mr. F. Eugen Blass, received in evidence and marked

"Plaintiff's Exhibit No. 479." (*See Exhibits, Vol. II, page 890.*)

Letter dated March 18, 1921, signed by F. M. Eugen Blass, to Thomas W. Miller, Esq., Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 480." (*See Exhibits, Vol. II, page 892.*)

Memorandum dated March 23, 1921, "To: Colonel Miller, From: Mr. Caton," received in evidence and marked "Plaintiff's Exhibit No. 481." (*See Exhibits, Vol. II, page 893.*)

Letter dated March 27, 1921, signed by F. M. Eugen Blass, to Thomas W. Miller, Esq., Alien Property Custodian, received in evidence and marked "Plaintiff's Exhibit No. 482." (*See Exhibits, Vol. II, page 895.*)

Letter dated April 7, 1921, signed by Charles B. Calvert, Bureau of Trusts, to The Chemical Foundation, Inc., received in evidence and marked "Plaintiff's Exhibit No. 483." (*See Exhibits, Vol. II, page 897.*)

MR. GALLOWAY: Plaintiff next offers in evidence a letter dated July 28, 1920, from Verplanck & Prince to the Alien Property Custodian and asks that the same may be read in evidence as "Plaintiff's Exhibit No. 484."

Received in evidence and marked "Plaintiff's Exhibit No. 484." (*See Exhibits, Vol. II, page 898.*)

MR. GALLOWAY: This letter, if your Honor please, states in substance that the American Kitchen Products Company had reported to the Alien Property Custodian concerning a certain contract that it has with a German citizen, which contract provides for the payment of royalties under a process for the manufacture of bouillon cubes invented by a German and that his client

wanted to know if the Custodian contemplated selling the rights of the enemy in this contract.

Plaintiff next offers in evidence a letter dated July 30, 1920, to Verplanck & Prince from the Division of Patents, R. C. Goldstein, Chief of Division, which acknowledges the receipt of their letter, and we ask that the same may be read in evidence as Plaintiff's Exhibit No. 485.

Received in evidence and marked "Plaintiff's Exhibit No. 485." (*See Exhibits, Vol. II, page 899.*)

MR. GALLOWAY: This letter acknowledges the receipt of the previous exhibit and advises that all the right, title and interest in this contract has been transferred to The Chemical Foundation, and in the future they should pay all such royalties to them.

MR. KRESEL: Does that conclude the correspondence on that subject?

MR. GALLOWAY: Yes.

MR. KRESEL: May I inquire what it is that the Government is criticising in that connection?

MR. GALLOWAY: Among other purposes, this correspondence shows that the Alien Property Custodian could have found purchasers other than The Chemical Foundation for this property; and it shall also be our contention that it is rather hard to conceive how royalties accruing under a contract are necessary to advance the chemical industry in the United States. Those are only two of the purposes. There may be others, your Honor.

MR. KRESEL: There is no question of the seizure or anything of that sort, is there?

MR. GALLOWAY: We do not question the seizure.

THE COURT: May I make this inquiry there,

Mr. Galloway. If the seizure is not questioned, and a power of sale existed, then the question whether the property so seized should be sold to one person or another is subject to judicial review. I am trying to get the ultimate issue there. Can you help me on that?

MR. GALLOWAY: If your Honor please, the statement which you have made, of course, assumes a great many things which we do not admit in the case. It assumes, first, the existence of a power. Then the question arises, what kind of power, if it existed.

THE COURT: Power of seizure. I thought I assumed the power to seize only. Did I make another assumption?

MR. GALLOWAY: I think you assumed more. My recollection is you assumed also the power of sale and then asked whether the judiciary could inquire into whether or not a sale could be made to one person or another. As I say, at the very threshold of that question are the questions of power, and if there was any power, what kind of power.

MR. KRESEL: You mean the power to sell. That is what you are questioning. I think it would clarify the issue as to that if we did have this discussion here.

THE COURT: If Mr. Galloway does not mind.

MR. GALLOWAY: I would rather not get into a discussion of that, because I think it takes us right back over the things that we have discussed already.

THE COURT: It seemed to me that it presented just a shade different question there and I was trying to see what the ultimate issue as to that was. But, Mr. Galloway, you prefer not to go into that at this time.

MR. GALLOWAY: I would rather not, your Honor.

MR. KRESEL: All right, your Honor.

MR. GALLOWAY: Plaintiff next offers in evidence a letter dated January 16, 1919, from Mr. Hoguet to Mr. Palmer in which he summarizes his letter of January 15, 1919; the letter of January 15th having previously been offered and admitted in evidence here.

THE COURT: I recall it.

MR. GALLOWAY: We shall ask that the enclosure, which is a letter of January 15th, be not duplicated in the record.

Letter dated January 16, 1919, received in evidence and marked "Plaintiff's Exhibit No. 486." (*See Exhibits, Vol. II, page 900.*)

MR. GALLOWAY: Plaintiff next offers in evidence a list of re-assignments by The Chemical Foundation to various assignors as stated in such list, covering——

MR. KRESEL: Has that been agreed upon?

MR. GALLOWAY: Mr. Boggs gave it to me as the document which you people were willing to agree upon. If I am incorrect, I would like to know it.

MR. KRESEL: I do not know what Mr. Boggs did, but I should like to see it. Were you going to offer that now?

MR. GALLOWAY: I was going to offer that in evidence.

MR. KRESEL: Will you go ahead with something else while I look at this?

MR. GALLOWAY: I will offer that later, yes. However, I wish to state that many of the minutes which I am going to offer now refer to assignments made in the list of assignments which

I have just presented to counsel for the defendant and shall offer at another time.

THE COURT: Those deal with assignments of what character?

MR. GALLOWAY: These are assignments, if your Honor please, by The Chemical Foundation to various assignees, as set forth in the list which I have just handed to counsel for the defendant, and which list purports to state the reasons for cal Foundation also show the reasons for the assuch assignment; and the minutes of The Chemisignment; and I think I am quite fair, in summarizing, in saying that those reasons in every instance show that it was because of the claim of prior ownership by an American or by a person who was not an enemy.

MR. KRESEL: Let me understand. I am very glad that I stopped you with reference to this proposed stipulation. You do not desire to be bound by all of this stipulation; is that your point?

MR. GALLOWAY: Well, I do not know that there is any discrepancy between the two.

MR. KRESEL: You state that this stipulation does not give the correct reason for the assignment.

MR. GALLOWAY: I do not understand that I so stated. If I did, I wish to be corrected.

MR. KRESEL: That was my understanding of it. I understood you to say that the stipulation gives reasons for the assignment which are different from those stated in the minutes.

MR. GALLOWAY: I beg your pardon. I did not make such a statement. If I did, I want to be corrected.

MR. KRESEL: You do agree then that this stipulation is correct and you want to offer it; is that so?

MR. GALLOWAY: That is what we did. We offer it.

THE COURT: Admitted.

Received in evidence and marked "Plaintiff's Exhibit No. 487." (*See Exhibits, Vol. II, page 907.*)

MR. GALLOWAY: If your Honor please, we have offered some of the minutes of The Chemical Foundation, Incorporated, previously with respect to certain subjects that we were attempting to develop at that time; and because of that situation, I have made an abstract or summary of the way in which we would like to offer the remainder of such minutes as we desire to offer in evidence. I shall therefore read it and ask that it be taken on the record; and offer the other minutes as I come to them in this memorandum.

Plaintiff has heretofore introduced certain of the minutes of The Chemical Foundation, Incorporated, which have been identified with various exhibit numbers and now desires to introduce additional minutes of The Chemical Foundation, Inc., and in order to simplify the record requests that in making up and printing the record all the minutes introduced may be printed together in their order by dates, and where they have been separately introduced in order to prevent confusion in the record, referred to the page where the exhibit will be found in the minutes of the whole. For the purpose of simplification, the following notes are made upon the record and additional minutes introduced:

The entire minutes of April 4, 1919, have already been introduced as Exhibit No. 58. Attached to and made a part of these minutes are three papers, one headed "The Chemical Foundation, Inc.," another headed "Subscription," and

another headed "The Formation of The Chemical Foundation, Inc." In the offer of these minutes, which appears on the record at page 694, these three papers were not specifically mentioned, but they were intended to be included in the offer of the minutes of which they are a part. It is therefore requested that they be now offered and read in evidence as Plaintiff's Exhibits 58A, 58B and 58C. (*See Exhibits, Vol. I, pages 191, 197 and 199, respectively.*)

MR. KRESEL: Your Honor please, I think I neglected to place my objection on the record to that batch of letters that went in. Your Honor said that we should withhold that until they are all offered together and I simply neglected to do it. May it be understood that I have an objection to the introduction of those.

THE COURT: I understand that when Mr. Galloway is through offering exhibits, you may make such objections as you desire, whether your objections run to all the exhibits or not, or you may make specific objections to any exhibit or group of exhibits.

MR. KRESEL: I thank your Honor. These additions to the minutes of April 4th that have been just offered we object to as immaterial and irrelevant.

THE COURT: But you have no objection to the order in which they are offered?

MR. KRESEL: Certainly not. I think it is a very good idea.

MR. GALLOWAY: In offering these minutes, your Honor, we should be very glad to suggest to counsel for the defendant that copies may be substituted for the originals, if you so desire.

MR. KRESEL: Very well. We will be glad to do that.

MR. GALLOWAY: Plaintiff now offers in evi-

dence the minutes of the meeting of the Board of Directors of The Chemical Foundation, Inc., held in New York City on Wednesday, May 14, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 488.

Received in evidence and marked "Plaintiff's Exhibit No. 488." (*See Exhibits, Vol. II, page 922.*)

MR. KRESEL: May I inquire of Mr. Galloway what there is in those minutes that he considers as material in the present offer?

MR. GALLOWAY: If you want me to take up the time to do it with each of them, I shall be glad to do so.

MR. KRESEL: I am trying to see if it is not possible for you to offer only a portion of the minutes. I may concede what you want to prove by it. There are ways of shortening this instead of putting in the entire minutes.

THE COURT: Could you indicate briefly and generally the evidential value, from your standpoint, of the exhibits now offered?

MR. GALLOWAY: I can point out one particular portion, especially:

"Resolved, That the President, or the Vice-President in the absence of the President, be and they are hereby authorized, without further action of the Board of Directors, to execute, in the name and on behalf of the Corporation, license agreements in proper cases in said form; and the Secretary be and he hereby is authorized and directed to attach the corporate seal and attest the same by his signature, to any license agreements executed by the President or Vice-President as aforesaid."

That is one portion that we think is material. Here is another portion in which the Treasurer

was authorized to accept an assignment of a patent for transforming-nozzle for fifty dollars from the Alien Property Custodian. Here is another portion of the minutes where the Treasurer was authorized to accept on behalf of the Corporation an assignment from the Custodian for the trade-mark "Duron," and another trade-mark "C. W. H. H.," and all the rights under certain agreements between certain corporations and to pay the Alien Property Custodian the sum of fifty dollars for it.

MR. KRESEL: All of which we are perfectly willing to concede.

MR. GALLOWAY: And another one in which the Treasurer was authorized to accept on behalf of the corporation an assignment from the Custodian of fourteen patents relating to gyroscopic devices and to pay the Custodian the sum of $500. At this same meeting a proposed form of license agreement was adopted.

MR. KRESEL: Which is already in evidence, is it not?

MR. GALLOWAY: Not so marked here.

MR. KRESEL: Well, you did put in two license forms.

MR. GALLOWAY: Yes, but you used two different license forms, and among others was an agency contract such as you executed with the Pacific Flush Tank people.

MR. KRESEL: Mr. Galloway, if you want to put in the license forms annexed to those minutes, I have no objection to that.

MR. GALLOWAY: I shall be very glad to do so.

MR. KRESEL: What I am trying to do is to keep the whole minutes from going in.

THE COURT: Suppose you consider that this

afternoon after adjournment and see if the minutes can not be abbreviated by stipulation.

MR. GALLOWAY: If your Honor please, we have some 15 or 16 items here of such minutes that we are going to ask leave to introduce.

MR. KRESEL: You mean sixteen separate meetings?

MR. GALLOWAY: Sixteen separate meetings.

MR. KRESEL: Then I make the suggestion that Mr. Galloway now make one offer, reading from this memorandum, we will make our objection and take your Honor's ruling. If your Honor should admit the minutes, the Clerk can mark them and then Mr. Galloway and our side will try to get together to see if we can not eliminate some of it.

MR. GALLOWAY: That was the thing I suggested some few days ago and you began at once to ask me what parts were material and what parts you wanted to exclude and I had to exclude the balance sheet.

MR. KRESEL: I certainly do; and I would like to know now. But I am trying to shorten it as much as possible, if that is agreeable to you.

MR. GALLOWAY: We shall be very glad to do that.

THE COURT: You make your offer now of such portions as you desire and they will be admitted subject to objection. Then if, by conferences outside of Court, counsel can agree upon some method of shortening the exhibits, or possibly eliminating them entirely and substituting a stipulation, that would be preferable.

MR. GALLOWAY: Plaintiff also offers in evidence the minutes of the meeting of the Board of Directors of The Chemical Foundation held at New York, June 28, 1919, to be identified and read as Plaintiff's Exhibit 489.

Received in evidence and marked "Plaintiff's Exhibit No. 489." (*See Exhibits, Vol. II, page 931.*)

Plaintiff also offers in evidence the minutes of the meeting of the Board of Directors of The Chemical Foundation held on July 6, 1920, and asks that the same may be identified and read in evidence as Plaintiff's Exhibit 490.

Received in evidence and marked "Plaintiff's Exhibit No. 490." (*See Exhibits, Vol. II, page 932.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of a meeting of the Board of Directors of The Chemical Foundation held on October 4, 1920, together with a printed paper attached thereto entitled "Agency agreement," to be identified and read in evidence as Plaintiff's Exhibits 491 and 491-A.

Received in evidence and marked "Plaintiff's Exhibits Nos. 491 and 491-A," respectively. (*See Exhibits, Vol. II, pages 935, 942.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of a special meeting of the Board of Directors of The Chemical Foundation held December 18, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 492.

Received in evidence and marked "Plaintiff's Exhibit No. 492." (*See Exhibits, Vol. II, page 947.*)

MR. GALLOWAY: We next offer in evidence the minutes of the annual meeting of stockholders of The Chemical Foundation, held on the 4th day of April, 1921, excluding therefrom proxies, waiver of notice, and including only the minutes of the meeting, and ask that the same may be identified as Plaintiff's Exhibit No. 493.

Received in evidence and marked "Plaintiff's Exhibit No. 493." (*See Exhibits, Vol. II, page 949.*)

MR. GALLOWAY: We next offer in evidence minutes of the meeting of the Board of Directors of The Chemical Foundation, Inc., held on June 21, 1921, and ask that the same may be read in evidence as Plaintiff's Exhibit 494.

Received in evidence and marked "Plaintiff's Exhibit No. 494." (*See Exhibits, Vol. II, page 951.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the meeting of the Board of Directors of The Chemical Foundation held on July 22, 1921, and asks that the same may be read in evidence as Plaintiff's Exhibit 495; and with such exhibit we offer a statement attached to said minutes showing "Licensed products," "patent agreement in production" and "royalty rate," consisting of seven typewritten pages, and ask that the same may be identified and read in evidence as Plaintiff's Exhibit 495-A.

Received in evidence and marked "Plaintiff's Exhibits Nos. 495 and 495-A," respectively. (*See Exhibits, Vol. II, pages 952, 956.*)

MR. GALLOWAY: We next offer in evidence the minutes of the meeting of the Directors of The Chemical Foundation held in New York on November 2, 1921, and ask that the same may be read in evidence as Plaintiff's Exhibit 496.

Received in evidence and marked "Plaintiff's Exhibit No. 496." (*See Exhibits, Vol. II, page 961.*)

MR. GALLOWAY: We next offer in evidence the minutes of the stockholders' meeting of The Chemical Foundation held on February 6, 1922, and ask that the same may be read in evidence as

Plaintiff's Exhibit 497. We desire, however, to exclude from such exhibit the balance sheet, the proxies, the list of stockholders and the affidavit of the Secretary of service of notice, the form of notice, the oath of inspectors and report of inspectors of election.

Received in evidence and marked "Plaintiff's Exhibit No. 497." (*See Exhibits, Vol. II, page 963.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the meeting of the Directors of The Chemical Foundation held June 22, 1922, and asks that the same may be read in evidence as Plaintiff's Exhibit 498.

Received in evidence and marked "Plaintiff's Exhibit No. 498." (*See Exhibits, Vol. II, page 966.*)

MR. GALLOWAY: With Exhibit No. 498, Plaintiff offers in evidence the following documents attached to said minutes:

Letter dated June 19, 1922, to The Chemical Foundation, Inc., signed by Thomas F. Conroy, and asks that this may be read as Plaintiff's Exhibit 498-A.

Paper entitled "Assignment of Subscriptions," dated June 15, 1922, signed by Francis P. Garvan, to be identified as Plaintiff's Exhibit 498-B.

Letter dated July 31, 1921, addressed to The Chemical Foundation, signed by Douglas I. McKay, and ask that the same may be read in evidence as Plaintiff's Exhibit 498-C.

Letter dated June 19, 1922, to The Chemical Foundation, Inc., signed by James E. Morgan, and asks that the same may be read in evidence as Exhibit 498-D.

Paper entitled "Assignment of Subscrip-

tions," dated June 15, 1922, signed by George J. Corbett, to be identified as Plaintiff's Exhibit No. 498-E.

Letter dated June 28, 1922, to Mr. Thomas F. Conroy, signed by The Chemical Foundation, Inc., to be identified and read in evidence as Plaintiff's Exhibit 498-F.

Letter dated June 28, 1922, to Douglas I. McKay, signed by The Chemical Foundation, Inc., to be identified as Plaintiff's Exhibit 498-G.

Letter dated June 28, 1922, to James E. Morgan, signed The Chemical Foundation, Inc., to be identified as Plaintiff's Exhibit 498-H.

Received in evidence and marked Plaintiff's Exhibits 498-A, 498-B, 498-C, 498-D, 498-E, 498-F, 498-G, and 498-H," respectively. (*See Exhibits, Vol. II, pages 976 to 982, inclusive.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the meeting of the Board of Directors of The Chemical Foundation, Inc., held on November 22, 1922, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 499.

Received in evidence and marked "Plaintiff's Exhibit No. 499." (*See Exhibits, Vol. II, page 983.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the Advisory Committee of The Chemical Foundation, held on December 17, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 500. We shall be glad to follow the same plan with regard to eliminating certain portions that we agreed upon, if you desire that, Mr. Kresel.

Received in evidence and marked "Plaintiff's Exhibit No. 500." (*See Exhibits, Vol. II, page 985.*)

MR. GALLOWAY: Plaintiff next offers in evi-

dence the minutes of the Advisory Committee of the Chemical Foundation held February 18, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 501.

Received in evidence and marked "Plaintiff's Exhibit No. 501." (*See Exhibits, Vol. II, page 991.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of a meeting of the Advisory Committee of The Chemical Foundation, Inc., held March 17, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 502.

Received in evidence and marked "Plaintiff's Exhibit No. 502." (*See Exhibits, Vol. II, page 994.*)

Plaintiff next offers in evidence the minutes of the meeting of the Advisory Committee of The Chemical Foundation, Inc., held April 21, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 503.

Received in evidence and marked "Plaintiff's Exhibit No. 503." (*See Exhibits, Vol. II, page 997.*)

MR. GALLOWAY: Plaintiff next offers in evidence copy of the minutes of the meeting of the Advisory Committee held on July 21, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 504.

Received in evidence and marked "Plaintiff's Exhibit No. 504." (*See Exhibits, Vol. II, page 999.*)

MR. GALLOWAY: Plaintiff next offers in evidence copy of a letter from H. E. Bateman, Secretary of the Advisory Committee of The Chemical Foundation, to Colonel Douglas I. McKay, dated August 19, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit 505.

Received in evidence and marked "Plaintiff's Exhibit No. 505." (*See Exhibits, Vol. II, page 1000.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the meeting of the Advisory Committee of The Chemical Foundation of September 22, 1920, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 506.

Received in evidence and marked "Plaintiff's Exhibit No. 506." (*See Exhibits, Vol. II, page 1002.*)

(Recess until one o'clock, Standard time.)

AFTER RECESS

MR. GALLOWAY: I am going to read very little of these. The minutes are rather long.

THE COURT: You be controlled by your own judgment.

MR. GALLOWAY: I do not want to take any more time than I feel is essential.

Plaintiff offers in evidence the minutes of the meeting of the Executive Committee of the American Dyestuffs Manufacturers' Association of April 10th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 507.

Received in evidence and marked "Plaintiff's Exhibit No. 507." (*See Exhibits, Vol. II, page 1004.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of Executive Committee of the American Dyestuffs Manufacturers' Association of May 22nd, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 508.

Received in evidence and marked "Plaintiff's Exhibit No. 508." (*See Exhibits, Vol. II, page 1005.*)

MR. GALLOWAY: Plaintiff next offers in evidence minutes of the meeting of Executive Committee of the American Dyestuffs Manufacturers' Association of September 3, 1918, and asks that same may be read in evidence as Plaintiff's Exhibit No. 509.

Received in evidence and marked "Plaintiff's Exhibit No. 509." (*See Exhibits, Vol. II, page 1007.*)

MR. GALLOWAY: Plaintiff next offers in evidence copy of the minutes of meeting of Board of Governors of the American Dyestuffs Manufacturers' Association, held September 16, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 510.

Received in evidence and marked "Plaintiff's Exhibit No. 510." (*See Exhibits, Vol. II, page 1008.*)

MR. GALLOWAY: The plaintiff next offers in evidence minutes of meeting of members of the Chemical Alliance, Incorporated, the American Dyes Institute and the American Dyestuffs Manufacturers' Association, held at the Hotel Biltmore, September 26, 1918, and asks that the same may be read as Plaintiff's Exhibit No. 511.

Received in evidence and marked "Plaintiff's Exhibit No. 511." (*See Exhibits, Vol. II, page 1009.*)

MR. GALLOWAY: I just wish to call the Court's attention to some of the purposes of the meeting. Among others, it says: (Reading from exhibit).

Plaintiff next offers in evidence the minutes of the meeting of the Executive Committee of the American Dyestuffs Manufacturers' Association of November 12, 1918, the same to be read in evidence as Plaintiff's Exhibit No. 512.

Received in evidence and marked "Plaintiff's

Exhibit No. 512." (*See Exhibits, Vol. II, page 1028.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the Annual Meeting of the American Dyestuffs Manufacturers' Association, held December 6, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 513.

Received in evidence and marked "Plaintiff's Exhibit No. 513." (*See Exhibits, Vol. II, page 1030.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the meeting of the Executive Committee of the Dyes Institute of May 7, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 514.

Received in evidence and marked "Plaintiff's Exhibit No. 514." (*See Exhibits, Vol. II, page 1052.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the meeting of the Executive Committee of the American Dyes Institute of June 5, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 515.

Received in evidence and marked "Plaintiff's Exhibit No. 515." (*See Exhibits, Vol. II, page 1055.*)

MR. GALLOWAY: I might state to your Honor that many of these minutes that we are introducing now bear upon the question of the inauguration and operation of an open price association by the American Dyes Institute.

THE COURT: Will you have anything to say about that?

MR. KRESEL: I will, your Honor, but it was my understanding that I was to wait——

THE COURT: I did not know we were getting into that and shall be glad to hear you now if you have anything to say about that.

MR. KRESEL: Yes, your Honor. Before I take up that point, will your Honor permit me to address myself first to the minutes of the several meetings of the Executive Committee of the American Dyestuffs Manufacturers' Association which Mr. Galloway has just finished offering. It seems to me, your Honor, that even under the most liberal rule that the Court could adopt in permitting testimony on the part of the Government, these minutes ought not to be permitted in.

To begin with, the first of these series of minutes is dated April 10, 1918. It is of the Executive Committee of the American Dyestuffs Manufacturers' Association, which is not an organization that is mentioned as one of the conspirators in the Bill. Taking as an example the minutes of that first meeting, I direct your Honor's attention to the fact that it consists of seven paragraphs: The first paragraph deals with taking a lease of offices; the second deals with an authorization to the Secretary to furnish the office with necessary furniture; the third deals with fixing the Secretary's salary; the fourth deals with a motion that the Secretary be appointed Assistant Treasurer with power to sign checks; the fifth deals with an instruction to the Secretary to issue a bulletin from time to time setting forth the activities of the association.

The next paragraph deals with an instruction to the Secretary to put the Association in touch with all branches of the Government in order to co-operate in the fullest extent in all matters of mutual interest.

The seventh and the last paragraph says that it was decided to commence the active work of the Association by creating the following Committees: and then there is a blank. I notice that some-

one has bracketed the sixth paragraph, which deals with the instruction to the Secretary to put the Association in touch with all branches of the Government in order to co-operate to the fullest extent in all matters of mutual interest. I assume that that bracket indicates that the Government feels that that part of the minutes is perhaps immaterial. If I am incorrect in that, Mr. Galloway may correct me.

Now then, your Honor, to burden up this record with the minutes of this meeting, a meeting of April 10th, 1918, before there was any suggestion made by anybody that these patents were to be transferred to anybody, before it is claimed even in the Bill that any conspiracy was thought of; to put on the record that this Association which was starting out on its career had instructed its Secretary to put the Association in close touch with all branches of the Government in order to co-operate with the Government—laudable a purpose as that may be—is absolutely immaterial in this case. I ask in all fairness that the Government state in what respect it claims these minutes are material and relevant here. I think the defendant is entitled to know.

Now, if your Honor will take the minutes of the next meeting of the 22nd of May——

THE COURT: They are in a lesser or greater degree subject to the same criticism?

MR. KRESEL: Exactly, sir.

THE COURT: Without specializing, I should be very glad to hear Mr. Galloway.

MR. ANDERSON: If your Honor, please, Mr. Galloway has asked me to reply.

The Bill in this case alleges that prior to June and for some time prior thereto, there had been proceedings or steps taken to bring about a con-

trol of the dyestuffs industry through certain corporations, mergers and associations; that about June, 1918, about that time, this object was to a large extent accomplished and thereafter there developed in pursuance of the plan—or call it a "conspiracy"—a definite program to bring about the control of this industry in the United States, contrary to the Statutes of the United States, and that this acquisition of the patents was one of the elements in that situation, one of the steps in that procedure.

Whether our position on the law is sound or unsound, I take it that there can be no reason for debate that we are entitled, at least, to put in the case on the theory that we have argued it and to argue the case before the Court when we come to it.

As to the express minutes themselves, I am quite ready to agree with counsel for the defendant that much of the material which he read is immaterial in this case, and I am quite ready to stipulate it out and limit the record to what we deem material. The only reason it has not been done is, if I am correctly informed—there is so much of this stuff that I might be mistaken—that this data was not available. Certainly, I never saw it until it was produced here.

Since we have been here, we have been taxed to the utmost to try to eliminate what we could. Your Honor may not think we have eliminated much, but the amount of stuff that has been eliminated nearly fills a room over in the hotel. I personally have stayed up until one and two o'clock every night since I have been here to try and eliminate everything I could in this case.

At one time I thought I could abbreviate by taking extracts from these minutes, and I so

stated to the Court. On going through the minutes we found that the extracting of them for what we deemed material and important would be practically re-writing them except for a few formal matters.

We would be only too glad to stipulate out of the record or cut out of the record, in any way it can be arranged, any of these matters that are not material. But I simply have not had the time and my associates have not had time to make up the abbreviations or omissions that would be necessary in this case; and therefore, if we offer the minutes, we have to offer them as a whole.

I do not wish to burden the record, but the minutes which we are now going to offer of the American Dyes Institute and the American Dyes Manufacturers' Association show that they merged soon after their organization into one institution. It bears on one of the main questions involved in this case; probably the most important evidence we put into this case.

I shall contend before the Court, that counsel may have my views—which he suggests he is entitled to, which I agree to, and the Court also—that they are conclusive evidence of a conspiracy to restrain interstate and foreign commerce in an effort at least to bring about a monopoly; and they demonstrate that the purchase of these patents and the method of bringing about the purchase of these patents, and the other conditions surrounding it, was a step in that transaction. And if that is true, then the transaction was illegal in its inception, in its purpose and everything else.

Under these circumstances, I will have to ask your Honor, unless your Honor wants to pass upon these minutes in detail—I will not ask it; I simply suggest—that the minutes are offered for

that reason, among others, as supplementing and necessary to the culmination of the evidence already introduced on that subject.

It should have been offered earlier. It was interrupted by the fact that I tried personally to go over this matter to see if I could not find some way to shorten it. I have held them to the last with that object in view, but I can not do it. Therefore, we would like to offer these minutes in evidence with the statement that I wish to make on the record, that we will be only too glad to stipulate to cut out of the record any parts thereof that are formal or which we can agree do not relate to the issues in this case.

THE COURT: This is the American Dyes what?

MR. ANDERSON: American Dyestuffs Manufacturers Association was merged with the American Dyes Institute. I think they had memberships in common, but they were merged very soon after. Here I think are all the minutes of the American Dyestuffs Manufacturers Association. There are only three meetings.

THE COURT: Is the American Dyes Institute a living association still?

MR. ANDERSON: I am not sure that it is a living association today, but it was a very vital and living association when this transaction took place and during the entire proceedings under investigation in this case; and it was the organization to which reference was made in the report of the Alien Property Custodian and others, as being the manufacturers, and they underwrote all the stock of the Chemical Foundation. At that time, if I remember correctly, the American Dyestuffs Manufacturers Association had been merged with this company and came into the membership in that way. So it has a direct bearing upon the

2295

essential proof of conspiracy in this case and we think will be a most essential part of it.

THE COURT: My difficulty there, Colonel Anderson, when Mr. Galloway called the nature of the minutes to my attention, was how any unlawful practices, if they be unlawful, can be material, pertinent or relevant here if the organization of The Chemical Foundation and its practices, the practices of the defendant, are not illegal. I have been having difficulty right along and I am not clear at all on whether The Chemical Foundation can be construed as a monopoly, and unless you show that its practices are illegal and in violation of some Act of Congress, how can the practices of some other association or organization which might have been illegal be pertinent to the issues here? Probably I have rather indicated than stated—

MR. ANDERSON: I think I have your Honor's difficulty. If your Honor please, it would be most remarkable if the Court in the trial of this case, with the enormous amount of documentary evidence put in, only part of which has been read, could get, as much as we have tried to give the Court that evidence in an orderly fashion, any definite and complete idea of the case. That would be our duty on argument, to prepare very full briefs on the facts of this case so your Honor will not have to read all of this record, and we will undertake to do that.

But answering your Honor's suggestion, let us suppose, to take your Honor's suggestion, but only for that purpose, that the practices of The Chemical Foundation were entirely all right. Let us suppose that the American Dyestuffs Manufacturers Association and the American Dyes In-

stitute and the large corporations whose merger we have offered to show, gradually in pursuit of a purpose gathered from the acts and records, which is the only way it can be gathered, conceived and undertook to carry out a purpose by which they would control an essential industry of the United States engaged in interstate commerce, control and be able to obstruct and undertake to obstruct the development of the foreign commerce of the United States, undertake to monopolize that industry. They do not have to succeed. If they undertake to monopolize, the Sherman Act and the Clayton Act would make it illegal *ab initio* as to the Government of the United States. It does not matter; you can eliminate, for the purpose of immediate discussion, that question from this case.

THE COURT: Do you mind if I ask you a question there?

MR. ANDERSON: Not at all, sir.

THE COURT: Suppose John Doe had bought the patent at public sale, would the purchase by him have been illegal?

MR. ANDERSON: If John Doe had purchased it, upon that mere statement of facts, not any more than that, I might concede, assuming the power, let us say, that the sale to John Doe might be valid.

THE COURT: Not for the purpose of indicating any position, but of merely trying to find a position,—

MR. ANDERSON: I understand, sir. Your Honor will understand my difficulty, too?

THE COURT: Yes. But would not John Doe have not only been guilty of trying to monopolize, but if some of the theories advanced here by the other side are correct, that the German patents

had this country by the throat and he had acquired them all, he would not only have been trying to obtain a monopoly, but he would have succeeded, would he not, in monopolizing the control of the importation of dyes?

MR. ANDERSON: Quite possibly. Quite possibly he might have succeeded in trying to monopolize the control of the importation of dyes. But then he would have acquired and been doing what he was authorized by an Act of Congress to do, and that which is authorized by law is not illegal.

Every patentee *per se* is a monopolist as to the thing controlled by the patent; that is all it is; and he does not have to even exercise it. It is a valuable right if he does not exercise it, under our law. Whether the law is right or wrong, I do not discuss. But if half a dozen or a dozen people or a combination of people interested in that industry go to work and undertake to acquire all of the patents relating to the chemical and dyestuffs industry (they are operating now as separate and independent institutions) for the avowed purpose—Now, one man can not be guilty of conspiracy to do an unlawful act; he can do an unlawful act, but he can not be guilty of conspiracy; but when a number of people operating separately go to work for the avowed purpose of acquiring the control of an industry (whether we prove that or not is a question of argument), and to that end are restraining the foreign commerce of the United States, and that particular act is shown by a series of transactions, resolutions, motions, and so forth, and the actions of those parties be for the purpose of acquiring such control with an intent to monopolize and to restrain the foreign and interstate commerce of the United States, then

the thing becomes illegal in its inception and every person that comes into it later and helps to carry out that purpose becomes *ipso facto* a member of this illegal combination.

THE COURT: May I ask two questions there?

MR. ANDERSON: Yes, sir.

THE COURT: My difficulty is great on this point.

MR. ANDERSON: I concede it is a difficult point, sir.

THE COURT: It seems to me that whatever their purpose was—not their primary purpose, but the purpose that this group of persons may have had in their minds in the beginning—becomes immaterial unless that purpose, even though unlawful, were carried out. Unless you can first establish (not now; I mean in this case at any time) that the Chemical Foundation does carry out the unlawful purposes to which you refer, then it seems to me those unlawful purposes, if they were unlawful, must be dropped by the wayside and we must forget them. That is one difficulty I have in mind.

The other difficulty presented by your argument is this: that although one person might have acquired all the patents by purchase, yet, if I understand the necessary and inevitable consequences of your proposition, it is that the more numerous the persons who became interested in The Chemical Foundation, the more heinous (probably that is not the exact term) was the act. Now, if a company had purchased them, it might not have been a conspiracy. It might have been the highest bidder at a public sale. I take it that such acquisition would not have been in violation of the monopoly statutes. Or do you hold that it would be?

MR. ANDERSON: It would depend on so many circumstances, if your Honor please. Your Honor has asked a question that presents opportunity for argument, and at the proper time I shall argue it very fully, because one of the most interesting questions in the law is just the subject we are on today. Therefore I have not undertaken to discuss it as much as I could.

THE COURT: Let us close our discussion. But I will hear you, Mr. Kresel, if you wish.

MR. ANDERSON: Therefore I would prefer to argue it later, if I could.

THE COURT: But do you not think, notwithstanding your position which you took in your opening, that this is not a case under the Sherman Act?

MR. ANDERSON: No, I do not think so.

THE COURT: Very well.

MR. ANDERSON: May I answer your Honor's question?

THE COURT: Yes.

MR. ANDERSON: I think it is quite important to get this clear. I think it will be of great help in a later stage if I state my position now. It will just take me a minute or two. When I mentioned the relief under the Sherman Act, I meant that the relief accorded by the Sherman Act to the Government of the United States was not involved. The Sherman Act was involved; but it is a different result, an illegal result, flowing from the declaration of the statute itself, and not the specific relief granted by the statute. That is what I meant, and when I do not undertake to answer your Honor's question, which I would be only too glad to do if your Honor desires it, do not understand that I agree with your Honor's view.

THE COURT: Not at all; and the purpose of

my questions is as you have indicated, namely, that I follow you much more intelligently if I know where you are trying to go than if I guess at the path you are trying to take.

MR. ANDERSON: I believe in about five minutes I could answer your Honor's question.

THE COURT: I think I understand your position.

MR. ANDERSON: I could answer it; but I do not want to take up undue time, and I am afraid I would, because I am really disposed to argue fully.

MR. KRESEL: I did not fully understand your Honor's inquiry as to whether I desired to say anything with reference to the next series of minutes that Mr. Galloway was about to offer, namely, something having to do with an open-price association. We can not see how any evidence of an open-price association, even assuming that the activities of that association were contrary to the law, which we do not concede,—we do not see how that is in any way material to the issues here. I can not hope to express it any more clearly than your Honor expressed it in your colloquy with counsel which has just been closed.

Assuming that the American Dyes Institute did have an open-price association, assuming for the purposes of the argument, and for that only, that that was illegal, how can anything that the Chemical Foundation has done be in any way affected thereby. If the activities of The Chemical Foundation are not open to attack as illegal, if their administration of this property is lawful, how can it be material that some other organization had an unlawful combination among its own members?

Upon that ground, your Honor, we object to

the introduction of any minutes of any other organization than The Chemical Foundation, for the purpose of showing that there was an open-price association.

What I have said about an open-price association I hope will not be taken either as an admission, or as even a tacit admission, that simply because an association has what is called an open-price association, that is illegal.

THE COURT: I express no views on that.

MR. KRESEL: The United States Supreme Court in the Hardwood case has held just the contrary. There have got to be certain elements that the Court found in that case, in order to make an open-price association so-called contrary to the law.

But whatever the facts may be as to that, we are not bound thereby. It can not in any way solve the issues that your Honor has got to decide here, as to whether the disposition of this property was proper; and we object thereto.

MR. ANDERSON: I must ask your Honor's leave to reply to that.

MR. KRESEL: May I say one more word, Colonel?

MR. ANDERSON: Certainly.

MR. KRESEL: Colonel Anderson said (I am saying this not in criticism of Colonel Anderson, because I know he has been under great strain; so have we all here) that these minutes had become available to him only since this trial started. The Secretary of this Association tells me that these minutes were open to your investigators as early as last summer; that they went all through them in the office of the Secretary.

MR. ANDERSON: Possibly counsel misunder-

stood me. They were inspected; but they were brought where we could use them only since I have been here.

THE COURT: As I understand you, while they have not been withheld from you at any time, they had not come within your reach for your immediate purposes until this trial started.

MR. ANDERSON: That is right; and I have never personally seen them.

MR. KRESEL: I have no doubt that Colonel Anderson did not examine them. My information is that the Government took them away from this Association last fall and had them in its posession.

MR. ANDERSON: I did not know that. I just want to say one word in reply to counsel. I agree with his construction of the Hardwood cases, that an open-price association *per se* by name is not necessarily opposed to the law of monopoly; but I also must respectfully insist that the open-price association is one of the elements and evidence of a purpose to monopolize. Counsel seem to think that I am here undertaking to prove a monopoly *per se* for the purpose of stopping the monopoly. I am not.

THE COURT: I understand that.

MR. KRESEL: No, I did not misunderstand you.

MR. ANDERSON: And The Chemical Foundation was organized by this very organization. Its stock was underwritten by this very organization. Every share of its stock was originally taken by this very organization, and to this date they are to all intents and purposes the same organization. The Chemical Foundation is nothing more than a stakeholder.

MR. KRESEL: May I make a suggestion, your Honor? Will you pardon me? Because I think

it is so apt. Let us assume, Colonel Anderson, that all that you say about the American Dyes Institute is right; that it was a monopoly of the worst kind; and then let us assume that if stockholders went out and organized a district school to teach poor children, and used their money for that purpose, and that then the school went down and taught poor children; would you say that the organization of that school was illegal?

MR. ANDERSON: I would not, because many legal acts may be done in the accomplishment of an illegal purpose such as creating a monopoly. They are steps in or leading to the ultimate purpose, and they may be part of the proceeding having for its ultimate object the creation of a monopoly.

THE COURT: If I understand Mr. Kresel, do we not have to come down in the last analysis of this: Is The Chemical Foundation a monopolistic organization in violation of any statute of the United States?

MR. ANDERSON: No, sir, we come down to this proposition: whether at the time that this sale was made the procurement of this contract of sale, the making of this contract of sale, was a part of a purpose to monopolize or to restrain the commerce of the United States. If it was, it was *ab initio* void when it was made, because as to that it would be unlawful; and I do not care whether the illegal objects were ever consummated or not.

I recognize that that is an application of the Sherman Act that is unusual; but, of course, your Honor is going to concede me the right to argue it, and I think I can establish it.

THE COURT: I am, but the weather has been hot.

MR. ANDERSON: It has been awful.

THE COURT: And this case presents a numerous number of elements; it presents numerous elements with which I have been hitherto unfamiliar. But I believe it would help me in the ultimate decision of this case if you would have patience with me just a minute longer.

MR. ANDERSON: It is your Honor's patience, not mine.

THE COURT: I am not stating an ultimate decision now, but I just can not see the end of your contention at the present time, and I want to, if possible. I will put it this way for the purposes of this discussion. Surely you can not give The Chemical Foundation or those interested in it or in the formation of The Chemical Foundation credit for or charge them with a purpose different from that which they accomplished, can you? I am merely feeling my way. And then if that purpose accomplished, weighed and tested by the acts and facts in immediate connection therewith, is not of itself a monopoly, how can we read into it any monopolistic tendencies or desires or purposes, if such there were? Do I indicate my thought?

MR. ANDERSON: Your Honor has indicated your trouble and I am going to try and answer very briefly.

THE COURT: I would be obliged if you would.

MR. ANDERSON: In the first place, I will answer your Honor's suggestion that we can not charge The Chemical Foundation with a purpose other than that which they accomplished. To the contrary, if I may say so, a man is presumed to intend the natural and probable consequences of his act.

If a man or a corporation starts out to do an

illegal thing, and during the progress of his illegal acts, does something which is prejudicial to another man and violates the rights of another man; and later on, after he has violated the rights of the other man by this act, which is one of the steps in his illegal purpose, he finds that he can not accomplish his illegal purpose, that there is some obstacle in the way, that it is too dangerous or something of that sort, and therefore abandons his illegal purpose—I am not saying that applies to this case; I am simply using an illustration—

THE COURT: I understand.

MR. ANDERSON:—abandons the illegal purpose; does his abandonment of his illegal purpose deny to the person whom he has injured the redress which would arise from this injury done in an effort to accomplish the illegal purpose, where the intent existed and can be evidenced by proceedings leading up to the wrong thus done? Certainly not.

The legal rights of people can not be interfered with in that way. He will be presumed, as against the person he has injured, to have intended, as to that person, the natural and probable consequences of the act by which the injury to that person was accomplished; and the fact that he may have subsequently abandoned that purpose or have changed his view, or for any other reason did not accomplish what he started out to do, could not affect the rights of the person injured during the progress of the proceeding. That is the first answer. Therefore, I answer your Honor's question in the negative.

THE COURT: Won't you make the application to this case?

MR. ANDERSON: I will. I am coming to that

right now. I answer that in the negative and now I will come to the conclusion.

Let us assume for the sake of this argument, as my friend Mr. Kresel has done, that the American Dyes Institute and its associated or constituent organizations were engaged in an effort to monopolize the business of the United States. Let us assume that in the effort to monopolize the business of the United States, in which they were interested, they proposed not only to combine their own interests and to have an open-price association, which is one of the elements of restraint and strongly indicative of it, but that they also proposed to reach out and get control of the patent rights held by the Government of the United States, which the Government was under no obligation whatever to sell—purely voluntary, and they could have held them indefinitely—

THE COURT: Executive discretion?

MR. ANDERSON: I will put it this way: The discretion of the Alien Property Custodian.

THE COURT: I mean of the Executive Department of the Government.

MR. ANDERSON: When your Honor says "Executive," it embraces the President. I do not think he had anything to do with it at the time of sale.

If in the carrying on of that proceeding, they who were the beneficiaries of and engaged in this unlawful purpose, which we will assume for the present was unlawful, went to work and procured this sale to be made under conditions indicated in this case of great haste and participated in the bringing about of the sale and of the steps necessary in the sale; and it should appear as a logical conclusion from all the facts and circumstances—

and nothing is more intangible; thousands of facts may be considered and collated that that was achieved in that way—that they organized The Chemical Foundation as an agency to that end and put into it a clause which on its face was absolutely void as to trusteeship, as an inducement to the officers of the Government and a part of the representation; and let us further assume that when they got these patents into the hands of The Chemical Foundation, that they undertook, using The Chemical Foundation to that end, and its supposed and eleemosynary purpose, to secure a dye embargo in the United States and legislation to that end which would have brought about this condition,—that they undertook to secure control of all importations into the United States, and let us suppose even then that they failed, and this is where it differs from an ordinary Sherman law case, which I want to emphasize, if all that were going on, and we instituted an anti-trust case and it was proved that it was all over and they were not doing anything further, you might prosecute them, assuming that they had been guilty of criminal acts, which I do not suggest in this case, for their past wrongs, but there would be no grounds for relief by an injunction because there would be nothing to enjoin, if they had abandoned it. There would be where the Sherman law would not be applicable.

But in this case we have got this novel question which I am going to argue very earnestly to your Honor when I come to it, because it is absolutely new under the Sherman law, I say quite frankly, but I think it is sustained by inference from the authorities; and that is this: That whereas an individual can not defend against a contract which he makes which is contrary to the

Sherman law on the ground that the contract is unlawful, because it has been held he is a party to the unlawful act and his remedy is otherwise than on the contract if he has any, and whereas there may not be at this time any ground for the injunctive relief provided for in the section of the Sherman Act, and dissolution, yet if the making of this contract which is here under consideration was in pursuance of a purpose which was prohibited by the Sherman Act and if it was a contract which had for its purpose, along with other purpose and as a part of the general purpose, the monopolizing of the business or the restraint of the interstate or foreign commerce of the United States, then by express terms of the Sherman Act it is declared to be unlawful and therefore could not be made by the President or anybody else.

I was very much struck by a question your Honor asked Mr. Polk, when Mr. Polk, to my utter surprise, I confess, said he would have signed this Order if he had known it would create a monopoly in the United States. And your Honor asked him why. He said because it had been taken care of by the anti-trust and Clayton Act, and I think if Mr. Polk, with his ability, had time to consider—

Mr. Kresel: That was not his entire answer; it was a portion of it.

Mr. Anderson: No, I do not mean to say it was his entire answer. Your Honor will see the record and I am not undertaking to state the whole record. If Mr. Polk had taken time to consider he would have known that when he answered that question he declared to this Court that he was ready to do, if he was not doing, an act forbidden by the Statutes of the United States, and therefore unlawful for anybody, including the

President of the United States himself, because he is bound by the law.

If your Honor please, so far as I know that direct question has never been raised under the Sherman Act. I thought they had all been raised, but there is always something new in the law. It is one of the most interesting questions in this case. Coming back to the immediate issue, that is very essential to the immediate issue in this case, and I anticipate great pleasure in arguing that question before your Honor fully at the hearing in this case, but I want the evidence complete when I do argue it.

THE COURT: I had no intention of varying my general rule.

MR. ANDERSON: I understand that, sir.

THE COURT: And I hope you will not only argue that question and debate it fully at the time of the final hearing, but that you will elaborate that in your brief.

MR. ANDERSON: I understand that, sir.

THE COURT: So that even I fully comprehend it. I do not mean it is abstruse.

MR. ANDERSON: I understand that. Your Honor is entitled to have a question of that kind fully briefed and fully argued, because it is one of the most interesting and difficult questions that I know of, of all the Sherman Act questions. No one knows what the Sherman or Clayton Acts mean, but it presents to me the most interesting question of this case. I do not hesitate to say so as a lawyer.

THE COURT: Mr. Kresel.

MR. KRESEL: I do not think, sir,—

THE COURT: I am not inviting it, only giving you the opportunity.

MR. KRESEL: Thank you, sir, I do not think there is anything more I desire to say.

THE COURT: With respect to the minutes I hope I will pass the matter of their length in this way: I hope counsel will find an opportunity to strike out from the exhibits all such portions as are clearly not material, and that that will be done as promptly as possible.

MR. ANDERSON: Your Honor, we will undertake to agree with counsel as to the part to go out and substitute abbreviated abstracts in place of them.

THE COURT: Then as to the remainder, the other acts or the acts of the American Dye Manufacturers' Association or the American Dyes Institute, which you believe material, you may put in under our general rule.

MR. ANDERSON: And I have asked Mr. Galloway only to read a few of the paragraphs so your Honor may have their connection with the issue.

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the Executive Committee of the American Dyes Institute, held November 6, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 516.

Received in evidence and marked "Plaintiff's Exhibit No. 516." (*See Exhibits, Vol. II, page 1057.*)

MR. GALLOWAY: Plaintiff next offers in evidence the copy of the minutes of meeting of the Executive Committee of the American Dyes Institute, held November 9th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 517.

Received in evidence and marked "Plaintiff's Exhibit No. 517." (*See Exhibits, Vol. II, page 1060.*)

MR. GALLOWAY: It appears that the constitution of the American Dyes Institute has already been offered in evidence as Plaintiff's Exhibit No. 15, as indicated on the record at page 524. The record is not clear as to whether that includes also the by-laws and I should like to have the order made that the by-laws be admitted with the constitution.

THE COURT: Let it be admitted as Exhibit 15-A.

MR. GALLOWAY: That is what I was going to suggest, that the by-laws of the American Dyes Institute be so marked.

Received in evidence and marked "Plaintiff's Exhibit No. 15-A." (*See Exhibits, Vol. I, page 65.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of a meeting of the American Dyes Institute on April 10th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 518.

Received in evidence and marked "Plaintiff's Exhibit No. 518." (*See Exhibits, Vol. II, page 1065.*)

MR. GALLOWAY: I just want to read one passage to show you the nature of this. There are a great many passages which are hard to pick out and read to the Court in any reasonably short time. (Reads portion of Plaintiff's Exhibit No. 15-A.)

Plaintiff next offers in evidence minutes of meeting of American Dyes Institute, held May 7th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 519.

Received in evidence and marked "Plaintiff's Exhibit No. 519." (*See Exhibits, Vol. II, page 1071.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of a meeting of the American Dyes Institute of June 5th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 520.

Received in evidence and marked "Plaintiff's Exhibit No. 520." (*See Exhibits, Vol. II, page 1078.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of a meeting of the American Dyes Institute of July 10th, 1918, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 521.

Received in evidence and marked "Plaintiff's Exhibit No. 521." (*See Exhibits, Vol. II, page 1089.*)

MR. GALLOWAY: I will just read another excerpt here to give your Honor an idea. (Reads from exhibit.) I read another resolution, only a few lines. (Reads from exhibit.)

Plaintiff next offers in evidence the minutes of meeting of the American Dyes Institute of August 7th, 1918, and asks that same may be read in evidence as Plaintiff's Exhibit No. 522.

Received in evidence and marked "Plaintiff's Exhibit No. 522." (*See Exhibits, Vol. II, page 1096.*)

(Mr. Galloway reads from Exhibit No. 522.)

THE COURT: Who was it asked that the prices be recorded with the Secretary?

MR. GALLOWAY: The members of the American Dyes Institute.

MR. HERSHKOPF: Not of the Institute. That is not so. The open-price section.

MR. GALLOWAY: Which is part of the Institute.

MR. HERSHKOPF: A very small part.

MR. GALLOWAY: It shows the members present if you want them.

THE COURT: No.

MR. GALLOWAY: E. I. du Pont, de Nemours & Co., Heller & Merz Co., John Campbell Co., Grasselli Chemical Co. are some of them.

Plaintiff next offers in evidence minutes of meeting of September 4th, 1918, and asks that same may be read in evidence as Plaintiff's Exhibit No. 523.

Received in evidence and marked "Plaintiff's Exhibit No. 523." (*See Exhibits, Vol. II, page 1104.*)

MR. GALLOWAY: Plaintiff next offers in evidence minutes of meeting of the American Dyes Institute of November 6th, 1918, and asks that same may be read in evidence as Plaintiff's Exhibit No. 524.

Received in evidence and marked "Plaintiff's Exhibit No. 524." (*See Exhibits, Vol. II, page 1109.*)

MR. GALLOWAY: It is suggested here that the minutes of the meeting of December 9th, 1918, of the American Dyes Institute, has previously been offered in evidence as Plaintiff's Exhibit No. 53, but that it might be contended from the record at pages 1038 to 1040 that the purpose of that offer was limited to showing the amalgamation, and I just wanted to make it clear that there was no such limitation.

THE COURT: As I stated before, it is offered for any purpose that the exhibit may serve in the case.

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of a joint meeting of the Executive Committee of the American Dyestuffs Manufacturers' Association and the American Dyes In-

stitute on January 7th, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 525.

Received in evidence and marked "Plaintiff's Exhibit No. 525." (*See Exhibits, Vol. II, page 1117.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of meeting of the American Dyes Institute of January 16, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 526.

Received in evidence and marked "Plaintiff's Exhibit No. 526." (*See Exhibits, Vol. II, page 1121.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the American Dyes Institute of January 22nd, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit No. 527.

Received in evidence and marked "Plaintiff's Exhibit No. 527." (Same as Plaintiff's Exhibit No. 26. *See Exhibits, Vol. I, page 81.*)

MR. GALLOWAY: The minutes of February 7th have already been introduced, it is my understanding, but there is a notation here that the minutes of the Executive Committee meeting of February 7th are in the exhibit box in Mr. Kresel's office. They have already been offered, it is my understanding.

MR. KRESEL: It is the first time I ever knew I had an exhibit box, but I think that is right.

MR. GALLOWAY: But those have already been offered, I am quite sure of that. Plaintiff next offers in evidence minutes of meeting of the American Dyes Institute of February 7th, 1919. The other was the Executive Committee. I ask that

the same may be read in evidence as Plaintiff's Exhibit No. 528.

Received in evidence and marked "Plaintiff's Exhibit No. 528." (*See Exhibits, Vol. II, page 1127.*)

MR. GALLOWAY: This includes an Executive Committee meeting, if your Honor please, but as there are some differences in what the minutes of those meetings are, I shall not ask to exclude them.

After the report of the Executive Committee, which your Honor will recall, was the report where they reported upon their meeting of January 27th. It says (reading).

THE COURT: How would it be, if I might suggest it, Mr. Galloway, that you put in now the minutes that you want to put in and then read them to me after you have eliminated the portions that you find unimportant. I am inclined to think we can save time that way.

MR. GALLOWAY: That would be quite satisfactory, your Honor.

Plaintiff next offers in evidence minutes of a meeting of the Executive Committee of the American Dyes Institute of February 17, 1919. If your Honor please, there are only a few portions that I have to read and I think I can call them to your attention rather hurriedly.

THE COURT: If you have them marked.

MR. GALLOWAY: Yes, I have them marked here. The long ones, I think, are practically passed, that I had to wade through. I ask that the minutes of February 17th be read in evidence as Plaintiff's Exhibit 529. (Reading.)

Received in evidence and marked "Plaintiff's Exhibit No. 529." (*See Exhibits, Vol. II, page 1137.*)

MR. GALLOWAY: Plaintiff next offers in evidence minutes of the Executive Committee of the American Dyes Institute of February 28, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 530 (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 530." (*See Exhibits, Vol. II, page 1138.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the meeting of the American Dyes Institute of March 7, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 531.

Received in evidence and marked "Plaintiff's Exhibit No. 531." (*See Exhibits, Vol. II, page 1139.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the Executive Committee of the American Dyes Institute held March 14, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 532. This shows present (reading) and that the chief matter under discussion was the Chemical Foundation, Inc. (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 532." (*See Exhibits, Vol. II, page 1148.*)

MR. GALLOWAY: Plaintiff next offers in evidence a copy of the minutes of the meeting of the Executive Committee of the American Dyes Institute on March 21, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 533. This shows present the members of the Executive Committee which I have previously stated and (reading).

Received in evidence and marked "Plaintiff's Exhibit No. 533." (*See Exhibits, Vol. II, page 1149.*)

MR. GALLOWAY: Plaintiff next offers in evidence the minutes of the meeting of the Executive Committee of the American Dyes Institute of March 28, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 534.

Received in evidence and marked "Plaintiff's Exhibit No. 534." (*See Exhibits, Vol. II, page 1151.*)

MR. GALLOWAY: I am getting to some of the long ones. I think I shall summarize them together and read them at that time.

Plaintiff next offers in evidence the minutes of the meeting of the American Dyes Institute of April 4, 1919, and asks that the same may be read in evidence as Plaintiff's Exhibit 535.

Received in evidence and marked "Plaintiff's Exhibit No. 535." (*See Exhibits, Vol. II, page 1157.*)

MR. MAHAFFY: If the Court please, it would save time, if I may suggest to Mr. Galloway, that he simply give the name of the committee, the date and that he follow the same formula throughout; the stenographer can take the formula and the Clerk give it a number later. I think it would save probably half the time.

THE COURT: I shall assume it is a regular meeting unless you say Executive.

MR. GALLOWAY: I will be very glad to do so without waiving any of the formalities, of course, that might be required for a formal offer.

THE COURT: I shall consider the offer as made in full and you may abbreviate as much as you like.

MR. GALLOWAY: Minutes of the Executive Committee, April 11, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 536." (*See Exhibits, Vol. II, page 1164.*)

MR. GALLOWAY: I would like to suggest, your Honor, in order that you may understand some things that are coming later on, that this goes into the question of the participation of the American Dyes Institute and the other organizations in the control of importation licenses as required by the War Trade Board.

THE COURT: What is the date of that?

MR. GALLOWAY: April 11, 1919. It shows part of the plan to control, as we contend, the dye interests or industry in the United States.

THE COURT: That was the day after the assignment had been executed.

MR. GALLOWAY: After the first assignment. Executive Committee Minutes of April 18, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 537." (*See Exhibits, Vol. II, page 1173.*)

MR. GALLOWAY: Executive Committee Minutes of April 25, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 538." (*See Exhibits, Vol. II, page 1182.*)

MR. GALLOWAY: Executive Committee Minutes of April 30, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 539." (*See Exhibits, Vol. II, page 1191.*)

MR. GALLOWAY: Regular meeting of the Institute of May 2, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 540." (*See Exhibits, Vol. II, page 1192.*)

MR. GALLOWAY: Executive Committee meeting of May 9, 1919.

Received in evidence and marked "Plaintiff's

Exhibit No. 541." (*See Exhibits, Vol. II, page 1201.*)

MR. GALLOWAY: Executive Committee meeting of May 23, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 542." (*See Exhibits, Vol. II, page 1208.*)

MR. GALLOWAY: Executive Committee meeting, May 29, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 543." (*See Exhibits, Vol. II, page 1212.*)

MR. GALLOWAY: Executive Committee meeting, June 6, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 544." (*See Exhibits, Vol. II, page 1220.*)

MR. GALLOWAY: Regular meeting, June 6, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 545." (*See Exhibits, Vol. II, page 1227.*)

MR. GALLOWAY: Executive Committee meeting of June 27, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 546." (*See Exhibits, Vol. II, page 1234.*)

MR. GALLOWAY: We would like to have Exhibit 546 include copy of a report or letter which is attached thereto of June 25 to the members of the American Dyes Institute to be identified as Exhibit 546-A.

Received in evidence and marked "Plaintiff's Exhibit No. 546-A." (*See Exhibits, Vol. II, page 1236.*)

MR. GALLOWAY: Regular meeting, July 10, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 547." (*See Exhibits, Vol. II, page 1243.*)

MR. GALLOWAY: Meeting of subcommittee of the Executive Committee in charge of proposed dye legislation in Washington. That was the Legislation Committee or Lobby Committee.

Received in evidence and marked "Plaintiff's Exhibit No. 548." (*See Exhibits, Vol. II, page 1250.*)

MR. GALLOWAY: Executive Committee, August 4, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 549." (*See Exhibits, Vol. II, page 1254.*)

MR. GALLOWAY: Executive Committee, August 7, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 550." (*See Exhibits, Vol. II, page 1256.*)

MR. GALLOWAY: Regular meeting of the Institute, August 7, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 551." (*See Exhibits, Vol. II, page 1261.*)

MR. GALLOWAY: Executive Committee, September 5, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 552." (*See Exhibits, Vol. II, page 1263.*)

MR. GALLOWAY: Regular meeting of the Institute, November 7, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 553." (*See Exhibits, Vol. II, page 1270.*)

MR. GALLOWAY: Special meeting of the Executive Committee, November 19, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 554." (*See Exhibits, Vol. II, page 1274.*)

MR. GALLOWAY: Special meeting of the Executive Committee, November 22, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 555." (*See Exhibits, Vol. II, page 1279.*)

MR. KRESEL: Mr. Galloway, may I inquire whether the book from which you have been offering these minutes is the original minute book?

MR. GALLOWAY: That is my understanding.

MR. KRESEL: Are there minutes in the book which you have not offered?

MR. GALLOWAY: Yes, quite a number.

MR. KRESEL: Are you through?

MR. GALLOWAY: I am not through with all of this. I am through with that book.

MR. KRESEL: Your Honor please, in addition to the other objections that we have urged to the admission of the books of the American Dyes Institute, we specifically object to the minutes of any meetings subsequent to April 10, 1919, upon the ground that, assuming there had been a conspiracy, the purpose and object of which was to obtain these patents for The Chemical Foundation, that conspiracy was completed and effectuated by the 10th day of April, 1919, if not by the 26th day of February, 1919, when the sale was made.

Unless the Government can show that the activities of The Chemical Foundation were controlled by the American Dyes Institute subsequent to the organization of The Chemical Foundation, anything that the American Dyes Institute did at its meetings is in no way material or relevant,

nor binding upon The Chemical Foundation. I call that to your Honor's specific attention because I am quite certain that the Government will agree with me that the activities of The Chemical Foundation were in the hands of its Board of Directors, who were elected by the voting trustees, and that the membership of the American Dyes Institute had no control of the stock of The Chemical Foundation, although they owned it, under the plan that was followed.

MR. GALLOWAY: Plaintiff further offers in evidence a copy of the minutes of the Executive Committee of the American Dyes Institute, January 3, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 556." (*See Exhibits, Vol. II, page 1282.*)

MR. GALLOWAY: Executive Committee, January 9, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 557." (*See Exhibits, Vol. II, page 1284.*)

MR. GALLOWAY: Executive Committee, April 8, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 558." (*See Exhibits, Vol. II, page 1288.*)

MR. GALLOWAY: Executive Committee, May 7, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 559." (*See Exhibits, Vol. II, page 1292.*)

MR. GALLOWAY: Regular meeting, May 7, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 560." (*See Exhibits, Vol. II, page 1297.*)

MR. GALLOWAY: Executive Committee, May 17, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 561." (*See Exhibits, Vol. II, page 1300.*)

MR. GALLOWAY: Regular meeting, June 11, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 562." (*See Exhibits, Vol. II, page 1304.*)

MR. GALLOWAY: Regular meeting, July 15, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 563." (*See Exhibits, Vol. II, page 1310.*)

MR. GALLOWAY: Meeting of the Board of Governors, September 29 and 30, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 564." (*See Exhibits, Vol. II, page 1326.*)

MR. GALLOWAY: Executive Committee, October 7, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 565." (*See Exhibits, Vol. II, page 1332.*)

MR. GALLOWAY: Executive Committee, October 29, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 566." (*See Exhibits, Vol. II, page 1336.*)

MR. GALLOWAY: Regular meeting, October 29, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 567." (*See Exhibits, Vol. II, page 1339.*)

MR. GALLOWAY: Executive Committee, October 29, 1920.

Received in evidence and marked "Plaintiff's Exhibit No. 568." (*See Exhibits, Vol. II, page 1351.*)

MR. KRESEL: Mr. Galloway, may I suggest that you now state to the Court the character of the records that you are about to offer, because I desire to raise my objection at this time.

MR. GALLOWAY: I shall be very glad to.

If your Honor please, we next offer correspondence and other documents and papers dealing with the activities of the American Dyes Institute and The Chemical Foundation, in connection with the War Trade Board and its regulation and control over importation of dyes into the United States.

THE COURT: During what period?

MR. GALLOWAY: My recollection is that this begins in March, 1919.

MR. KRESEL: At all events, it is subsequent to the organization of The Chemical Foundation?

MR. GALLOWAY: Yes.

MR. KRESEL: We take the point, your Honor, that it is immaterial and irrelevant. Should your Honor, however, allow the evidence to go in, we desire to reserve the right to put in the balance of this series. The Government knows well that this is not the complete file of this correspondence; and so we give notice now that we shall take advantage, if your Honor will permit us, of the privilege of putting in the balance of that record.

MR. ANDERSON: I state on behalf of the Government that we quite concede that that is fair, and will not object other than to make specific objection as to any particular papers. The general principles laid down by Mr. Kresel are I think entirely sound, and he can, of course, put in such portions as he thinks are pertinent.

THE COURT: Owing to the unusual character of this suit, as disclosed by the record, in connection therewith I shall apply the general rule to any documents which the Government may offer, however immaterial I may feel at the moment they may be.

MR. ANDERSON: I think I ought to state, in view of the objection, that these matters relate to the same general subject which we have discussed earlier and show the continued effort to accomplish the results which we claim have the legal effect indicated, and whether they have that bearing will involve quite an extended argument.

MR. GALLOWAY: If your Honor will pardon me just a moment; I had these arranged in chronological order, but in going over them I find they have been disarranged.

THE COURT: They may be offered en bloc, and you may arrange them afterwards.

MR. KRESEL: I will suggest, if Mr. Galloway will adopt the suggestion, that he might say, "I now offer the following correspondence: Letter from so-and-so, dated so-and-so," and then go right on, and let the Clerk subsequently mark them.

THE COURT: And giving an exhibit number to the paper so offered.

MR. KRESEL: Yes.

MR. ANDERSON: I think that is very wise. Just list them.

THE COURT: Of course, I should be glad to have these documents in as soon as possible.

MR. ANDERSON: I am also very anxious, sir, to do that; and I think I can state to your Honor that we can get these in and close our case probably this afternoon.

THE COURT: Then we shall continue the session today until that shall have been accomplished.

MR. GALLOWAY: I did not get exactly the idea of how these were to go in.

THE COURT: You have so many papers in your hand of the character just indicated by you or your colleague.

MR. GALLOWAY: That is right.

THE COURT: There are how many?

MR. GALLOWAY: Thirty-five, if your Honor please.

THE COURT: They are admitted under the same conditions as the preceding documents and will take serial numbers beginning with 569 and ending with 603.

Memorandum of arguments presented by J. H. Choate, Jr., at hearing on March 10, 1919, before War Trade Board, received in evidence and marked "Plaintiff's Exhibit No. 569." (*See Exhibits, Vol. II, page 1352.*)

Carbon copy of letter dated March 11, 1919, from W. F. Keehan, for the Alien Property Custodian, to Mr. Lawrence Bennett, Sec., War Trade Board, received in evidence and marked "Plaintiff's Exhibit No. 570." (*See Exhibits, Vol. II, page 1355.*)

Inter-office memorandum of War Trade Board dated March 26, 1919, to Mr. Gay, Mr. Bennett, Mr. Perrett, Mr. deLaittre, received in evidence and marked "Plaintiff's Exhibit No. 571." (*See Exhibits, Vol. II, page 1356.*)

Paraphrase of a cablegram from the American Ambassador at Paris, France, dated March 19, 1919, received in evidence and marked "Plaintiff's Exhibit No. 572." (*See Exhibits, Vol. II, page 1357.*)

Copy of telegram dated March 31, 1919, from

Paris, signed "Sharp" to Secretary of State, Washington, D. C., received in evidence and marked "Plaintiff's Exhibit No. 573." (*See Exhibits, Vol. II, page 1357.*)

Photostat copy of same telegram received in evidence and marked "Plaintiff's Exhibit No. 574." (Same as Plaintiff's Exhibit No. 573. *See Exhibits, Vol. II, page 1357.*)

Telegran dated April 1, 1919, signed B. S. Cutler to Mr. T. F. Miller, Secretary, National Aniline & Chemical Company, received in evidence and marked "Plaintiff's Exhibit No. 575." (*See Exhibits, Vol. II, page 1359.*)

Telegram dated April 1, 1919, signed B. S. Cutler, to Mr. Morris R. Poucher, E. I. duPont de Nemours Company, received in evidence and marked "Plaintiff's Exhibit No. 576." (*See Exhibits, Vol. II, page 1359.*)

Letter dated April 3, 1919, signed William C. Redfield, Secretary, to Dr. William T. Miller, received in evidence and marked "Plaintiff's Exhibit No. 577." (*See Exhibits, Vol. II, page 1360.*)

Letter dated April 3, 1919, signed William G. Redfield, Secretary, to Mr. Joseph H. Choate, received in evidence and marked "Plaintiff's Exhibit No. 578." (*See Exhibits, Vol. II, page 1361.*)

Letter dated April 5, 1919, signed J. H. Choate, Jr., to Hon. B. S. Cutler, received in evidence and marked "Plaintiff's Exhibit No. 579." (*See Exhibits, Vol. II, page 1362.*)

Letter dated April 7, 1919, from B. S. Cutler, to Mr. August Merz, received in evidence and marked "Plaintiff's Exhibit No. 580." (*See Exhibits, Vol. II, page 1364.*)

Carbon copy of letter dated April 8, 1919, from B. S. Cutler, to Mr. Francis P. Garvan, re-

ceived in evidence and marked "Plaintiff's Exhibit No. 581." (*See Exhibits, Vol. II, page 1365.*)

Letter dated April 9, 1919, signed Francis P. Garvan, to Burwell S. Cutler, received in evidence and marked "Plaintiff's Exhibit No. 582." (*See Exhibits, Vol. II, page 1368.*)

Letter dated April 9, 1919, from F. P. Garvan, to The Honorable, The Secretary of State, received in evidence and marked "Plaintiff's Exhibit No. 583." (*See Exhibits, Vol. II, page 1370.*)

Copy of telegram dated Washington, April 10, 1919, from J. H. Choate, Jr., to Dr. Charles H. Herty, received in evidence and marked "Plaintiff's Exhibit No. 584." (*See Exhibits, Vol. II, page 1372.*)

Telegram signed "Garvan" dated April 8, 1919, received in evidence and marked "Plaintiff's Exhibit No. 585." (*See Exhibits, Vol. II, page 1372.*)

Letter dated April 11, 1919, to War Trade Board.

Cablegram dated April 11, 1919, by War Trade Board, Paris, France, to American Embassy, Paris, France, received in evidence and marked "Plaintiff's Exhibit No. 586." (*See Exhibits, Vol. II, page 1374.*)

Memorandum dated April 12, 1919, to Mr. Wooley, Mr. Gay, Mr. Warrington, and others, signed "D. M. M., Assistant Secretary," received in evidence and marked "Plaintiff's Exhibit No. 587." (*See Exhibits, Vol. II, page 1378.*)

Paraphrase of a cablegram from the American Ambassador at Paris, France, dated April 15, 1919, signed "Wallace," received in evidence and marked "Plaintiff's Exhibit No. 588." (*See Exhibits, Vol. II, page 1379.*)

Cablegram dated April 26, 1919, to "Ammis-

sion," Paris, for Bradley W. Palmer from F. P. Garvan, received in evidence and marked "Plaintiff's Exhibit No. 589." (*See Exhibits, Vol. II, page 1380.*)

Cablegram dated April 26, 1919, to "Ammission," Paris, for Bradley W. Palmer from F. P. Garvan, received in evidence and marked "Plaintiff's Exhibit No. 590." (Same as Plaintiff's Exhibit No. 589. *See Exhibits, Vol. II, page 1380.*)

Memorandum dated May 5, 1919, to Mr. Bennett, Mr. DeLaittre, and Mr. Gay, from "D. M. M.," Assistant Secretary, received in evidence and marked "Plaintiff's Exhibit No. 591." (*See Exhibits, Vol. II, page 1384.*)

Letter dated May, 1919, from "Wallace" to Secretary of State, Washington, D. C., received in evidence and marked "Plaintiff's Exhibit No. 592." (*See Exhibits, Vol. II, page 1386.*)

Extract from proceedings of May 8, 1919, of War Trade Board, received in evidence and marked "Plaintiff's Exhibit No. 593." (*See Exhibits, Vol. II, page 1387.*)

Cablegram from War Trade Board to American Embassy, Paris, France, dated May 9, 1919, received in evidence and marked "Plaintiff's Exhibit No. 594." (*See Exhibits, Vol. II, page 1393.*)

Cablegram dated May 13, 1919, from War Trade Board to American Embassy, Paris, France, received in evidence and marked "Plaintiff's Exhibit No. 595." (*See Exhibits, Vol. II, page 1395.*)

Letter dated June 26th, 1919, from War Trade Board, Charles H. Herty, Secretary, re applications for import license, received in evidence and marked "Plaintiff's Exhibit No. 596." (*See Exhibits, Vol. II, page 1396.*)

Letter from Charles H. Herty, Secretary War

Trade Board, dated June 26th, 1919, re "The question of imports of Dyestuffs from Germany through the Reparation Commission," received in evidence and marked "Plaintiff's Exhibit No. 597." (*See Exhibits, Vol. II, page 1400.*)

Memorandum dated July 22, 1919, headed "The Present Practice of the War Trade Board Section with respect to the Handling of Applications for the Importation of Dyestuffs," received in evidence and marked "Plaintiff's Exhibit No. 598." (*See Exhibits, Vol. II, page 1404.*)

Letter dated September 29, 1919, to A. M. Patterson, President Textile Alliance, Inc., from Department of State, by Phillips, received in evidence and marked "Plaintiff's Exhibit No. 599." (*See Exhibits, Vol. II, page 1405.*)

Letter dated October 9, 1919, from State Department, by William Phillips, Assistant Secretary, to the Textile Alliance, Inc., received in evidence and marked "Plaintiff's Exhibit No. 600." (*See Exhibits, Vol. II, page 1408.*)

Letter dated October 11, 1919, from Robert Lansing to The Chemical Foundation, Incorporated, received in evidence and marked "Plaintiff's Exhibit No. 601." (*See Exhibits, Vol. II, page 1409.*)

Letter dated March 11, 1919, from The American Dyes Institute, Executive Committee, to War Trade Board, received in evidence and marked "Plaintiff's Exhibit No. 602." (*See Exhibits, Vol. II, page 1414.*)

Certified copy of letter dated November 8, 1919, from Robert Lansing to The Honorable Philander C. Knox, United States Senate, received in evidence and marked "Plaintiff's Exhibit No. 603." (*See Exhibits, Vol. II, page 1418.*)

MR. GALLOWAY: I have a letter which I did not

find before, which I wish to go into the record. It is a letter from Mr. Francis P. Garvan, Alien Property Custodian, to B. S. Cutler, Esq., dated March 22, 1919. I ask that the same may be read in evidence as Plaintiff's Exhibit No. 604.

Received in evidence and marked "Plaintiff's Exhibit No. 604." (*See Exhibits, Vol. II, page 1426.*)

MR. GALLOWAY: Plaintiff next offers in evidence a certified copy of the articles of incorporation of the Allied Chemical & Dye Company, and asks that the same may be received in evidence and marked Plaintiff's Exhibit No. 605.

Received in evidence and marked "Plaintiff's Exhibit No. 605." (*See Exhibits, Vol. II, page 1427.*)

MR. GALLOWAY: Mr. Kresel, do you recall that when the witness, Dr. Holdermann, was on the stand, it was requested that he should furnish a list?

MR. KRESEL: Yes.

MR. GALLOWAY: I gave a copy of that list to you.

MR. KRESEL: You did.

MR. GALLOWAY: I want now to produce the original list, so that the record may be complete.

THE COURT: I recall the testimony. Have you the list there?

MR. GALLOWAY: I have the list, your Honor.

MR. KRESEL: I had intended, your Honor, to move that the testimony of this witness be stricken upon certain grounds which I shall urge; but inasmuch as the only point that counsel has now brought forward is the question of this list, I want to specifically object to introduction of the list in its present form, upon the ground that the wit-

ness exceeded the privilege given to him by the Court to furnish a list.

THE COURT: What is on the list now offered?

MR. KRESEL: On the list as presented the witness has undertaken to give certain information regarding these patents.

THE COURT: Of what character?

MR. KRESEL: For instance, he has marked each pattern with a symbol. One symbol, "O" for instance, means "product," and "X" means "process;" a "-" means "products sold in the United States of America 1913;" a "*", according to him means "very valuable in use in Germany."

All of that is contrary to what was called for.

THE COURT: It is my recollection of the testimony that he was to list them as product and process. Is that not what he was to do?

MR. GALLOWAY: That was all.

MR. ANDERSON: Of course, that matter ought not to go in if that is the fact. I have not examined the list. The list ought to conform strictly to the evidence.

THE COURT: The exhibit, when modified to correspond with the terms laid down at the time Dr. Holdermann was on the stand, will be admitted and may receive the next consecutive number; but it will not be admitted so long as it contains anything that was not described at the time that Dr. Holdermann was on the stand.

MR. GALLOWAY: If your Honor please, I think the list as now compiled does show the information which the witness was requested to give; but it shows information, in addition to that, which he was not requested to give. If we may have permission to correct the list to show——

THE COURT: I do not care whether that paper

is corrected or whether another paper is put in, so long as it contains only information which was called for while he was on the stand.

Received in evidence to be marked "Plaintiff's Exhibit No. 606." (*See Exhibits, Vol. II, page 1438.*)

MR. KRESEL: Now, as to the admissibility of the witness's testimony, because I understand that is now before your Honor, as I understood it, when the testimony was taken it was agreed that your Honor was practically sitting as a Master at the time, and that the testimony would have to be offered in the regular way. I understand now that the Government is now offering that testimony; is that right, Colonel?

MR. ANDERSON: No, that was taken subject to your motion to strike out.

THE COURT: No, Mr. Kresel; that was taken out of order but indicated in the regular proceedings in the case otherwise.

MR. KRESEL: Your Honor will recall that we moved at the conclusion of the taking of that testimony that it be stricken.

THE COURT: Yes.

MR. KRESEL: And we ask the privilege of submitting a memorandum in support of the motion. I rather understood that your Honor would desire to hear argument thereon. We consider the matter of some importance. We have prepared a memorandum. I shall follow your Honor's wishes in the matter, and either postpone the argument or have it now.

THE COURT: I would prefer, if you will sacrifice no rights by so doing, to postpone that until after the Government's case is in.

MR. KRESEL: Very well, your Honor.

MR. HERSHKOPF: Then, your Honor, may we

have it noted that the objections which have since been raised to testimony, so far as applicable to Mr. Holdermann's testimony, be considered as applicable to it?

THE COURT: I am assuming all testimony taken is subject to any objection that counsel may raise at any time during the taking of the testimony or at the time of final argument in this case, because under the general rule that we have followed I do not see how we could well do otherwise.

MR. GALLOWAY: If your Honor please, there are a few things here to check up that I wish to run over and call to the attention of the Court.

Exhibit 6, which was a letter of January 24, 1918, from Mr. Hoguet to Mr. Lee Bradley, had with it a memorandum. Mr. Boggs has called my attention to the fact that that memorandum was attached to a letter of January 30th from Mr. Hoguet to Mr. Palmer, which I think is correct, and while I do not have it here, I wish to offer it in evidence now, with permission to supply the document later. It is at our hotel, and Mr. Boggs has copies of it which we have exchanged under the stipulation.

MR. KRESEL: All right.

MR. GALLOWAY: I wish to offer that, with permission to supply the letter of January 30th later, and to have the exhibit which is now attached to Exhibit No. 6, attached to Exhibit No. 607.

Received in evidence and marked "Plaintiff's Exhibit No. 607." (Same as Plaintiff's Exhibit No. 7. *See Exhibits, Vol. I, page 45.*)

If your Honor please, the plaintiff would also like to have a stipulation of record to the effect that either party in this trial, or any re-trial, or on any appeal, may have the right to refer to and read from the Armistice agreements, with the

same force as though the same were in evidence. Is that agreeable, Mr. Kresel?

MR. KRESEL: You speak of them in the plural. You mean the agreement with Germany and with Austria, both?

MR. GALLOWAY: Of November 3, 1918, and November 11, 1918.

MR. KRESEL: I assume that there are official publications of those.

MR. GALLOWAY: I am sure there are official publications and I think we have them.

MR. KRESEL: I see no objection to that.

THE COURT: So understood; that they may be hereafter referred to as if embodied in this record.

MR. KRESEL: Does that include the supplements thereto? Because I am told that there are quite a large number of supplements to those Armistice agreements.

MR. GALLOWAY: Why, I should think that that would give to either party the right to include either the Armistice agreement itself or any supplements.

MR. ANDERSON: So understood, Mr. Kresel.

MR. GALLOWAY: There is another thing that I would like to call to the attention of the Court before we rest our case: In checking over the record during the short vacation which we had we found many instances where there were perhaps some formal omissions, such as the Court failing to say "Admitted," or the record failing to show that the Court so stated; and I should like to cure that at this time without reference to the specific instances.

THE COURT: I will cure it now by stating that all documents heretofore offered by the Government as exhibits in this case are admitted as parts

of the record in this case, whether it was so stated at the time of the offer or not.

MR. GALLOWAY: Yes. If your Honor please, certain portions of the report of Mr. Palmer as Alien Property Custodian, of February 15, 1919, have heretofore been offered in evidence. We should like to offer in evidence Chapter 1 of that report. However, it is our belief that in making such offer matters which have already been offered are portions of Chapter 1, so we would like to have Chapter 1 and the Chemical chapter in its entirety offered in evidence at this time, with the privilege of excluding, to avoid duplication, any portions thereof which may otherwise have heretofore appeared in the record.

MR. KRESEL: I made the suggestion heretofore when the Chemical section of the report was introduced that the whole report ought to go in, but the Government did not deem it advisable. Now you offer both Part 1 and the Chemical section?

MR. GALLOWAY: That is it.

MR. KRESEL: That is the Chemical section is already in. Let me understand what Part 1 is.

(A discussion here ensued, which at the request of MR. Anderson and Mr. Kresel was not

MR. KRESEL: I do not think it is advisable with respect to this particular exhibit that it be not in the record as a whole. If the Government does not feel that it desires to offer it but desires only to offer Part 1 and the Chemical section, I can not dictate to the Government, but I will say now that upon our case I shall ask the Court to admit the whole document.

THE COURT: Then may I make a suggestion?

MR. GALLOWAY: Yes, sir.

THE COURT: If you will withdraw your application, let Mr. Kresel offer it now.

MR. ANDERSON: I will with great pleasure.

MR. KRESEL: I will be very glad to do it. I now offer, if your Honor please, the report of A. Mitchell Palmer as Alien Property Custodian, which was transmitted by him to the President of the United States with a letter of transmittal dated February 22, 1919. I notice that this is apparently a copy that the Clerk has used. The letter is in evidence, so I will ask that he mark the whole thing as the exhibit.

Received in evidence and marked "Defendant's Exhibit No. 30." (*See Exhibits, Vol. IV, page 2098.*)

MR. KRESEL: With reference to this exhibit which I have just offered, I do not want to lose the benefit of the fact that the Government offered as its exhibit the chemical section of this report. Your Honor understands?

THE COURT: Yes.

MR. KRESEL: I do not want by offering the whole report to be understood as waiving any rights which may be given to me by the fact that the Government has offered as its evidence the Chemical section of that report.

THE COURT: I understood that.

MR. KRESEL: That is perfectly understood, is it not?

MR. ANDERSON: Oh, yes, that is understood. I do not take it that either side waives any of its rights and that whatever evidence it has put in will be relied upon.

THE COURT: I assume the same provision will be made with respect to Section 1. Perhaps you can arrive at an agreement on that.

MR. KRESEL: Yes.

THE COURT: Because their offer was withdrawn only because you were going to make the offer of the whole.

MR. KRESEL: But they only withdraw the offer as to Part 1, they did not withdraw The Chemical section.

THE COURT: Yes.

MR. GALLOWAY: We next offer in evidence a letter from C. C. Bennett to M. R. Poucher, dated April 7, 1919.

Received in evidence and marked "Plaintiff's Exhibit No. 608." (*See Exhibits, Vol. II, page 1444.*)

MR. ANDERSON: It is a photostat of a copy, not actually signed but initialed C. C. B., and it is identified in one of the minutes of a meeting.

MR. KRESEL: I am going to assume that that was a letter written by Mr. Bennett. It is a personal letter, your Honor, in which the gentleman offers his resignation as Secretary of the American Dyes Institute and undertakes to give his opinions as to the relationship between that organization and The Chemical Foundation. It seems to us that that sort of communication ought not to be binding upon The Chemical Foundation. If the Government desires the benefit of Mr. Bennett's testimony as to that matter, then he should be produced here so that we may have the privilege of cross-examining him.

MR. ANDERSON: The Government does not wish to call Mr. Bennett. The letter in question was referred to in one of the minutes introduced and should have accompanied those minutes, but we have not handed a copy to counsel, and Mr. Galloway delayed until he could look it over.

THE COURT: But as I understand Mr. Kresel's objection, he says The Chemical Foun-

dation is not estopped from denying those things, nor the other evidence of the facts therein stated.

MR. ANDERSON: No, sir. It would be a question of argument that would be its weight and effect.

MR. KRESEL: No, it is a little more than that. We are not here before a jury, so neither you nor I could be prejudiced by discussing the contents of a letter.

MR. ANDERSON: Not at all.

MR. KRESEL: The letter is the resignation of Mr. Bennett, and then he goes on to say what he thinks were the relations between the two concerns.

THE COURT: Then you contend that is not evidence of the facts.

MR. KRESEL: That is not evidence of the facts.

THE COURT: Do you contend the contrary, Colonel Anderson?

MR. ANDERSON: It might not be conclusive evidence of the facts, but it would be evidence of the construction of that relation of these parties and their transactions, by the Secretary of the Dyes Institute, which is one of the parties.

THE COURT: I think I would be ready to rule on that now, Colonel Anderson.

MR. ANDERSON: I think, if your Honor please, that I would not care to argue the question of its admissibility as evidence unless I took the minutes and argued with them. The minutes show that letter was presented by Mr. Poucher, then a member of the Dyes Institute. Whether that particular statement would be of any evidential value against The Chemical Foundation I would be perfectly willing to argue at this time except that I want to avoid argument, if I can.

MR. KRESEL: You see, there can be no other

purpose in offering this letter except to seek to bind us by the statements therein contained. If Colonel Anderson wishes, that Mr. Bennett resigned on a certain day I am perfectly willing to concede. That is a fact.

THE COURT: I am not interested, so far as I am concerned, Mr. Kresel, because I am going to let him put this in the record if he wishes to—but so far as I am concerned I am not interested in the views of anybody as to the relationship. If Mr. Bennett has anything to say about the relation I will be glad to hear him. But his views in writing about it I am not concerned with.

MR. ANDERSON: I think frankness compels me to say there is a good deal of force in Mr. Kresel's objection, but I am not prepared to concede it at reported.)

this time, in so far as that particular sentence is concerned. I would like to reserve that question for argument later in connection with the whole record, when I might insist they do have some weight. But I do not want to go into the argument of it unless I can not help it.

There were one or two other matters. Colonel Miller left the stand without completing his testimony, and I understand it is agreed that he may be recalled after the Government has closed its case with the same effect as though it had not closed its case. That is agreed.

THE COURT: For further cross-examination.

MR. ANDERSON: For further cross-examination.

THE COURT: And further re-direct.

MR. ANDERSON: Further re-direct; yes, sir.

THE COURT: In that re-direct you will be restricted to re-direct.

MR. ANDERSON: Yes. There is one embarrassment in that connection. There are certain

matters perhaps as to which Colonel Miller was advised by his general counsel, Judge Wilson, and counsel would not be willing to have him testify to on counsel's advice. I would have to call Judge Wilson as to those, but I can not do it until Colonel Miller's evidence is finished. Limited to that, would you object if it became necessary—and I do not think it will—to complete the evidence on that subject—it will only take a few minutes.

THE COURT: I do not understand, Colonel Anderson.

MR. ANDERSON: There were certain papers that Colonel Miller could not personally testify to except on advice of his counsel, and if the evidence was objected to I would have to call Judge Wilson, his general counsel.

MR. KRESEL: There was no testimony adduced on Colonel Miller's direct, which would make it necessary, as you are now advised, to call Judge Wilson?

MR. ANDERSON: No, it was on the cross-examination, with regard to his connection with the Bill and things of that kind, which were handled entirely by Judge Wilson, and I could not very well call Judge Wilson until Colonel Miller had finished.

MR. KRESEL: If your Honor please, you have seen how we have been conducting this case. If my cross-examination of Colonel Miller has brought out anything, Colonel Anderson, which would make it necessary in your opinion to call Judge Wilson, I do not think I shall raise any very serious objection.

MR. ANDERSON: I do not think it will be necessary, but there are some questions raised there with respect to which I might have to put Judge Wilson on in fairness to the case.

THE COURT: Then as I understand, in order to put Judge Wilson on the stand as a witness after you have formally closed, the defendant contends that all you have to do is to call him and they will make no objection to his being called after you have closed rather than before.

MR. ANDERSON: Yes, sir.

MR. KRESEL: That is right.

MR. ANDERSON: And I will not do that unless it is necessary.

THE COURT: I wanted to make that specific.

MR. ANDERSON: Also as part of the plaintiff's case, as we conceive it, there should have been introduced certain evidence in regard to licenses issued by The Chemical Foundation. I was assured by Mr. Kresel that he would produce that evidence by the President of The Chemical Foundation when he is put on the stand. The licenses are in the vault in New York and they did not want to bring them over here any earlier than they could help. Therefore, with that understanding between Mr. Kresel and myself, we determined not to have them brought over here and put in before. They would not be in condensed shape and could be put in in a short time. That was the understanding.

MR. KRESEL: Yes. Let us get it concretely, Colonel Anderson. The understanding is that we on our case will introduce a statement showing what licenses The Chemical Foundation had issued from its very inception down to December 31, 1922, together with the amounts that have been received and the names of the licensees. Is that what you mean?

MR. ANDERSON: The numbers of the patents under which the licenses were issued, also.

MR. KRESEL: Yes, in order to identify the licenses.

MR. ANDERSON: Yes.

MR. KRESEL: We will do that.

MR. ANDERSON: And you will have the licenses here so I can examine them?

MR. KRESEL: Yes, the licenses will be in Court.

MR. ANDERSON: With that understanding, then, I won't burden the record twice with that evidence.

In connection with the forty-sixth paragraph of the Bill there was certain additional evidence I felt I would have to offer. I wished to avoid offering it if I could, and after a talk with counsel, counsel and I have agreed that if after further conference and investigation I reach the conclusion that that evidence or any part of it should be offered, he is perfectly willing to have it offered during the presentation of his case with the same effect as if produced on the affirmative case.

MR. KRESEL: If your Honor will permit that I am willing to make that stipulation.

MR. ANDERSON: There are certain reasons why we wish to follow this course. My associate reminds me, Mr. Kresel, that of course the statement of the licenses will show the royalty rate in each case.

MR. KRESEL: Oh, yes.

MR. ANDERSON: And all the essential data. If your Honor please, the Government has so far as we know, in the confusion of this enormous mass of material, introduced evidence on every paragraph of the Bill with the exception of those just indicated for the reasons stated, and therefore the Government——

THE COURT: Before you formally close, I am not sure whether I have brought to your attention that you are at liberty, if any evidence was in the

early days of this trial or at any time ruled out by me, to put it in. I want you to understand that there is no evidence which you desire to offer, whether it be written or oral, which I have any purpose of preventing you from putting on the record. You have understood that?

MR. ANDERSON: I understood that, and we did reoffer one document. I do not recall that anything else was omitted.

THE COURT: As I said a few minutes ago, owing to the peculiar character of this case and the incidents which are disclosed of record in connection with it, I feel that the Government should have full liberty to put of record everything which the Government is advised is material or relevant to the issues of the case; and before you close, if any paper or oral testimony has been rejected by me, I want to give you this opportunity to put it of record.

MR. ANDERSON: Your Honor is very kind and has been most considerate of us, and I hope we have not exceeded the limitations of good judgment in presenting the very voluminous record which we have presented, and which I am frank to say is very much fuller than we would have presented but for the rule your Honor has been following; and indicating that that rule would not be applied in rebuttal has made it necessary for us to anticipate the defense. Therefore it has been fuller than if we were proceeding strictly along the lines of evidence. I have no doubt that when I come to examine the record I will find that I have left out something, out of the enormous mass of stuff, relevant to this case. If that is the case, I have done the best I could to present a full record, and therefore the Government closes its case.

THE COURT: Mr. Kresel, you had a motion with respect to Dr. Holdermann's testimony. If convenient to you, I would like to hear that now.

MR. KRESEL: I doubt whether your Honor has more than a general recollection of Dr. Holdermann's testimony, but the substance of it can be stated in a very few words, and with your Honor's permission I shall state it.

Dr. Holdermann stated that he had been in the employ of the Badische Company in Germany for a number of years, mostly in an administrative capacity, although he was a chemist by profession. He stated that prior to March, 1922, he had never been in the United States. He stated that he had had charge in Germany for the Badische Company of the making of applications for patents. He then described in a general way the three classes of patents that had been owned by the Badische Company and which were subsequently seized by the Alien Property Custodian. He divided them into the following classes: There were fifty-eight patents that covered the nitrogen process, there were several patents, though very few as I recall them, which covered the tanning process, and then there were a large number, and as I recall it he did not give the number, covering dyes and dye manufacturing.

Dr. Holdermann was not asked and did not give any testimony as to the value of the dye patents. He did say that his concern in 1913 had made a certain profit out of its dye business. But he valued the nitrogen patents at seventeen millions of dollars, and I think he gave the value of the tanning patents as $300,000. I may be wrong as to that figure, but I shall look it up in a minute.

Upon cross-examination I asked Dr. Holdermann to state what he meant by the term "fair

market value," which was the term used by Colonel Anderson in putting to the Doctor the question that elicited the answer as to the value of these patents. The question was: "Just what do you mean by the market value of a patent; do you mean that there is a place somewhere where you can go and buy patents? A. You know yourself that there is no such place. Q. Then what do you mean by a market value of patents? I want your meaning of it so we can see what your testimony is worth? A. I think the market value of the patent is the value which the patent had for the inventor or the owner of the patent and for which he probably would have been willing to sell it. Q. That is what you mean by your testimony when you gave the market value of these patents, was it? A. Yes, I think that is a possibility."

It is clear, therefore, that this witness's testimony was based upon conditions which I am going to assume now, prevailing in Germany prior to the European War, and was not based upon conditions in the United States in 1919, as to which he was absolutely ignorant.

What those patents were worth to the Germans is absolutely immaterial in this case. It may well be assumed that to the Germans operating as they had been operating these patents were of immense value, but that is not the question that your Honor has to decide in this case.

Moreover, if the Germans had been in a position to have bid upon and bought these patents from the Alien Property Custodian, it might well be that even based upon the German conditions the evidence might be of some materiality. But the law forbade the sale of these patents to Germans. How, then, can it be material in this case to find out what a person would have been will-

ing to sell them for or buy them, if I assume that that was the evidence, if that person could not in fact have bought them under the law?

Dr. Holdermann did not have these patents before him here. They were not then introduced in evidence. But he undertook to say that the United States patents were like the German patents, covering the same process. It is perfectly apparent, and the doctor so testified, that under the German laws no one could obtain a product patent, while here we issue not only process, but also product patents. Many of these patents as to which the doctor undertook to testify are product patents.

So that your Honor will see that he was basing his estimate upon what he thought were patents such as he was familiar with in Germany, namely, process patents. While that consideration might be used by the doctor if called to his attention, to enhance the value in his opinion of the American patents, it is perfectly clear that what he was talking about is not only German conditions but German patents, and not the United States patents.

I have in this short argument sought to point out to your Honor the outstanding features of this witness's testimony, his manner on the witness stand, his evident interest in the outcome of the litigation. Your Honor will recall his testimony as to his trip here and the purposes of it, and I think he said that his company, the Badische Company, were then bringing suits to recover the license fees under Section 10f, and that they claimed these patents belonged to them.

Indeed, that had to be the claim or they could not maintain the action.

But quite aside from his interest, we say that

the testimony is worthless in so far as the issues here are concerned. Value evidence in this case is of great materiality. I think your Honor had the clearest conception of what was involved in this case of all of us when at the very outset you pointed out that there was really one question between us; that the Government claimed all we could show was value testimony and we claimed that all the Government could show was whether your Honor could consider the non-justiciable question that we claim is involved here.

So that it is important, very important in the presentation of the defendant's case that we at the very threshold of the case challenged the materiality and the force and the validity of any testimony upon value unless it is based upon such conditions and shows such knowledge by the witness as to make it a fair basis upon which the Court could act at all.

May I in this connection draw your Honor's attention to the fact that although these very patents which Dr. Holdermann valued at seventeen millions of dollars were available to the American industry since October 17, 1917, when the Trading with the Enemy Act was passed, and although it is in evidence that the Federal Trade Commission as early as March, 1918, issued a license to the Semet-Solvay Company covering these patents, down to the first day of July, 1922, not a dollar in royalties had been paid on these patents and the Semet-Solvay Company was the only one that had thought it worth while even to take out a license under these patents. I think we are entitled to have your Honor consider that point upon the question that I now present as to whether this testimony should be allowed to remain in the record.

We claim that it is incompetent, that the witness was not qualified to give the testimony, that he clearly showed that he did not have the basis upon which he could form an estimate and that therefore the evidence is incompetent.

I have prepared a written memorandum, your Honor, upon those points which I shall with your Honor's permission hand up, giving a copy to the other side.

THE COURT: I should be very glad to consider it, but in view of the general rule which we have applied to all oral and written testimony offered by the Government, I shall deny the motion. But I think that I indicated my temporary views while the testimony was being taken. Those views were merely temporary. They are subject to change in the ultimate decision of this case, but I have seen yet no reason to change the views then expressed. That is as far as I can go at this time.

MR. ANDERSON: Of course, I do not understand your Honor's statement as being in any way an expression of a ruling or opinion; and before your Honor expresses what might be called a view or opinion on that subject, I should like very much, of course, to be heard on that evidence. That is reserved. I do not want to argue with you this afternoon. I have not even the evidence here. I shall also ask leave, before your Honor considers this matter, to file a brief or memorandum in reply. But if it is quite agreeable to the Court, I should be very glad to include that in our briefs in the final argument of this case, because there is no use in filing several briefs.

THE COURT: I am not passing on it definitely.

MR. ANDERSON: Before your Honor passes on it definitely, I want to be heard.

THE COURT: I will hear you before I do that.

I think the record shows that what I said a moment ago was probably this, that I denied the motion because of our general rule. I indicated at the time the testimony was taken the impression that I had with respect to it. I have not changed those temporary views, but I do not say that I may not change them in the ultimate consideration.

MR. ANDERSON: That is all I ask; an open mind until I can argue, sir.

THE COURT: You will have full opportunity to overcome the impression that I indicated at the time the testimony was offered.

MR. ANDERSON: That is all I ask.

THE COURT: I am merely indicating that the laboring oar is yours, but you are not denied an opportunity to be heard.

MR. ANDERSON: I am perfectly willing to take the laboring oar.

THE COURT: Is there anything further that counsel on either side desire to say?

MR. KRESEL: Not at the present time, your Honor. I assume that your Honor will now take a recess.

THE COURT: As I understand you, counsel prefer not to sit at all on the fourth day of July.

MR. KRESEL: That would be my preference, although as to Friday, your Honor, I should like, if your Honor is willing to sit all day instead of half a day.

MR. ANDERSON: That makes no difference to me.

MR. KRESEL: As to next week, we should like to sit Monday and Tuesday, Thursday and Friday; Wednesday being a holiday.

THE COURT: I have sometimes since fixed

Monday, the 9th day of July, as a day of argument, in a patent case which has been heard.

MR. KRESEL: That is a week from next Monday?

THE COURT: Yes. So that when we adjourn on Friday of next week, as far as this case is concerned, it will be until the following Tuesday instead of Monday.

(Whereupon, at 3.40 o'clock, Standard Time, an adjournment was taken until Thursday, June 28th, 1923, at 8.30 o'clock A. M., Standard Time.)

Wilmington, Delaware,
8th May, 1923, at 10 O'clock A. M.

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Appearances:

HARRY M. DAUGHERTY, Esq., Attorney General,
By
Henry W. Anderson, Esq.,
Herman J. Galloway, Esq.,
William W. Wilson., Esq.,
William M. Offley, Esq.,
James H. Hughes, Jr., Esq.,
of Counsel for Plaintiff.

GUTHRIE, JEROME, RAND & KRESEL,
By
William D. Guthrie, Esq.,
Isidor J. Kresel, Esq.,
Bernard Hershkopf, Esq.,
Lucien H. Boggs, Esq.,
William G. Mahaffy, Esq.,
F. P. Warfield, Esq.,
of Counsel for Defendants.

MR. HUGHES: If the Court please, we are here for the hearing of Mr. Holdermann, one of the witnesses for the Government, I believe, in the case of the United States against the Chemical Foundation.

MR. GALLOWAY: If the Court please, in accordance with the arrangement which was made on last Friday, when counsel for the Government, as well as counsel for the defendant were present, the United States produced a witness here, Karl Holdermann, of Ludwigshafen, Germany. This we understand is in accordance with the plan which the Court then made of advancing the trial and arranging for the adjournment after the examination of this witness; and it is also our understanding that no opening statements are to be made at this time, but are to be deferred until June 4th, when the trial itself begins.

This witness, of course, is produced out of the order in which we ordinarily would proceed, and we ask to proceed at this time.

THE COURT: You may proceed according to that plan, Mr. Galloway, and you may take your testimony substantially as if before an examiner; and the defendant may reserve its exceptions and protect its rights in the same manner as if before an examiner, and after I have gotten to understand the case, I will pass upon those applications, but not now; that is, it will be impossible for me, without an opening statement, and without a preliminary study of the case, to make satisfactory rulings, either to one side or the other or to myself.

MR. GALLOWAY: I understand then, your Honor, that the objections should be interposed at this time, but the Court will reserve its rulings,

until after it has become more familiar with the case.

THE COURT: Correct, unless there is some objection.

MR. KRESEL: That is, all objections, both as to form, materiality, and irrelevancy.

THE COURT: No, there is no reason why a matter of form cannot be ruled on now as well as later, but matters of substance will have to go over until the case is really opened, and the testimony of this witness may be taken up some time during the regular trial of the case and the objections then ruled upon, probably before the Government closes, so that it may have an opportunity of putting in other evidence in case some matter of substance be stricken out.

MR. KRESEL: Very good.

MR. ANDERSON: I shall call Dr. Karl Holdermann.

KARL HOLDERMANN.

KARL HOLDERMANN was called as a witness on behalf of the Government, and having been duly sworn, testified as follows:

THE WITNESS: Your Honor, I am not very well acquainted with the English language and perhaps it will be necessary for me to ask you to repeat the questions.

THE COURT: If you have any doubt at any time about what the meaning of the question is, you may make such inquiry as will make it clear to you.

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 1. Your name is Karl Holdermann, is it?

A. Yes.

Q. 2. Where do you reside?

A. I am residing in Ludwigshafen on the Rhine.

Q. 3. Ludwigshafen on the Rhine?

A. Ludwigshafen on the Rhine.

Q. 4. That is in the territory of Germany, is it not?

A. Yes.

Q. 5. You are a citizen of Germany, are you not?

A. Yes, I am.

Q. 6. How old are you?

A. I am forty.

Q. 7. What is your business or profession?

A. Chemist is my profession.

Q. 8. Have you any degrees, college degrees, or other degrees as a chemist?

A. Yes, I am a diplomated engineer and Doctor of Engineering, both of the Technical High School, that is a sort of University of Carlsrusch in the Grand Duchy of Baden, or what was the Grand Duchy of Baden before the Revolution.

MR. ANDERSON: If your Honor please, I will state that if the Reporter does not clearly understand Dr. Holdermann's utterances, I hope he will stop him, because of his difficulty with the language.

Q. 9. In what year did you graduate or receive your doctor's degree as engineer and chemist from the school you mentioned?

A. It was in 1904.

Q. 10. 1904?

A. Yes, 1904.

Q. 11. What is your present position, and with what institution or company?

A. I am a member of the firm of the Badische Aniline & Soda Fabrik. I entered the factory in 1906, when I left the university; after I was graduated there I was two years assistant with various profes-

sors, organic and physical and chemical, and from there I went immediately to the Badische Aniline & Soda Fabrik in the spring of 1906, and I was there continuously up till now, and in 1920, I became assistant manager of this firm.

Q. 12. What is the general character of the business of this company which I will call for convenience the Badische Company?

A. We were generally manufacturing dye stuffs of most various kinds, and mineral acids and some salts, and in the recent times, a few years ago, we had started to manufacture ammonia in the synthetic way, you know, by the so-called Haber-Bosch process.

Q. 13. You say that you became assistant man-

A. Yes.

ager of this concern in 1920?

Q. 14. Before that time you had been employed as an employee of the concern, had you not?

A. As a chemist.

Q. 15. As a chemist of the concern, Dr. Holdermann, in your position with the Badische Company, prior to and since 1920, have you had anything to do with its patent department, or the handling or dealing with its patents?

A. Yes, I was with the patent department nearly all the time. I was in the Badische Aniline & Soda Fabrik already in 1906.

Q. 16. Does this company own or control any considerable number of patents?

A. Yes, we have quite a number of patents. We are taking out more than one hundred patents in Germany every year, and the more important of them are also applied for in the foreign countries. We have hundreds of patents in the foreign countries.

Q. 17. You take out those patents in Germany, and then in foreign countries; does that include the United States?

A. Yes. First in Germany, then in the foreign countries.

Q. 18. In connection with the patent department, do your duties require you to familiarize yourself with the character of these patents, their use and values and other incidents in connection with them?

A. Yes.

Q. 19. Do you know how many such patents the Badische Company owned in the United States in 1917?

A. There were about between 450 and 500 patents which were owned by the firm at the beginning of the war.

Q. 20. This is the case of the United States against The Chemical Foundation, Inc., involving questions as to the seizure and transfer of certain formerly German owned patents to The Chemical Foundation. Have you examined the list of patents accompanying the bill of complaint in this case, to ascertain if it includes patents of the Badische Company?

A. Yes, it includes all our patents.

Q. 21. It does?

A. Yes, that we had at the time.

Q. 22. All the patents that you had in the United States?

A. All the patents we had in this country.

Q. 23. Does it include any applications for patents then pending, which have since been granted?

A. Yes, all the applications which were then pending, and most of them have matured into patents since then.

Q. 24. When I say pending, I mean 1917, when the United States and Germany went into the war?

A. Yes.

Q. 25. Did it also include any trade marks or

applications for trade marks by the Badische Company?

A. This list of The Chemical Foundation?

Q. 26. I mean the seizure and conveyance to The Chemical Foundation, which is described in this bill of complaint?

A. All the trade marks.

Q. 27. Will you please state whether or not you have familiarized yourself with the situation sufficiently to say how many of the patents, applications for patents, trade marks and applications for trade marks which were then owned or claimed by the Badische Company, were seized by the United States and transferred to The Chemical Foundation?

A. Everything, all of them have been seized.

Q. 28. About how many?

A. About how many? About between 450 and 500 patents, and some few dozen of trade marks.

Q. 29. Can you give me any classification of the patents so seized by the United States and transferred to The Chemical Foundation as to their character; have you any means of classifying them in classes?

A. Yes, of course in rough lines, these patents cover nearly every field of chemistry, but most of them are for dye stuffs, wool dye stuffs, and vat dye stuffs, pigments and everything, and auxiliaries for dyeing processes, that is one group, and the other group for fixed nitrogen and the most important of them are those for the Haber-Bosch process and auxiliary processes therefor, and there is another field for synthetic tanning materials. That is a new art.

Q. 30. Have you a complete list of the patents of the Badische Company and applications for patents and trade marks, etc., which were so transferred?

A. Yes, we have.

Q. 31. Seized by the United States for The Chemical Foundation?

A. Yes.

Q. 32. Can you file that list as part of your deposition; have you it so made out separately that you can file it?

A. Yes.

Q. 33. Will you produce it?

A. It agrees with that which has been filed by The Chemical Foundation, and which is contained in the bill of complaint of the United States Government. I do not think there is any difference, no essential difference.

Q. 34. No essential difference?

A. No.

Q. 35. Then the patents as described in the exhibit with the bill of the United States Government, are the patents to which you refer, the patents and applications for patents to which you refer, to the Badische Company?

A. I think with a few exceptions.

Q. 36. That is substantially correct, is that true?

A. Yes, substantially correct.

Q. 37. Described as Badische patents in that exhibit?

A. Yes.

Mr. Anderson: Have you got that exhibit here?

The Witness: To be stated correctly, there are a few patents among them which have been taken out by our firm for the electric light process of fixing nitrogen. These patents have been transferred to the Norak Hydro Elektrisk Kdaelstof Aktienselskab.

Mr. Kresel: I am sorry I did not get that. Will you please repeat that?

The Witness: Norak Hydro Elektrisk Kdaelstof Aktienselskab.

MR. WARFIELD: Do you intend to prove title by this witness to anything?

MR. ANDERSON: No, I have to identify the patents, because his evidence would only come after proof of title. Therefore, I have to identify them.

MR. WARFIELD: So long as it is understood that this is not offered to prove title.

MR. ANDERSON: Of course, if your Honor please, we will introduce the evidence in its order showing the seizure by the Government and the transfer to the Alien Property Custodian. I do not assume that they will question the title of the Government. If they do, they will question their own; but I have to identify these patents at this time, in order that I may ask as to what the patents are and what value.

THE COURT: Are you going to rely at all upon the evidence of this witness with respect to title?

MR. ANDERSON: Not with respect to title, unless it might be some evidence of this witness would be pertinent to title; but I am not introducing it for that purpose, because we are going to show seizure by the Government of the United States, that is the only title we are interested in, and we are not undertaking to recover the patents for the Badische Company. Therefore, the title is not involved.

Q. 38. Turning to the printed bill of complaint——

MR. KRESEL: May I interrupt you for a moment? The witness was telling us of some of the patents that had been transferred to this Norwegian company. He said some of them, and I would like to have him identify, if he will, at this time, which were so transferred.

MR. ANDERSON: Certainly.

MR. KRESEL: If it is not interfering with your line of examination.

MR. ANDERSON: As soon as I get identification of the whole, I will ask him to identify, by eliminating those that were transferred.

Q. 39. Turning to the bill of complaint in this case, the printed bill, and exhibit thereto, I find on page 133 to 140, the following patents and applications were demanded under report No. 33,051, trust No. 734 of the Badische Aniline & Soda Fabrik Co. Is that the list of patents to which you refer?

A. Yes, these are the applications and patents of our firm that have been seized; yes, that is the list.

Q. 40. Now, Dr. Holdermann, you spoke a moment ago of some of those patents having been transferred to a Swedish company. Can you take the list and state just which patents, by number, were so transferred?

A. They have not been seized because they did not belong to our firm, but to a firm of a neutral country. It was a Norwegian company, and a few others. Here are three, 1,095,425——

Q. 41. 1,095,425?

MR. KRESEL: On what page of this bill of complaint do you find that, please?

MR. ANDERSON: Page 138.

THE WITNESS: 1,095,425, that is on page 138.

MR. KRESEL: And what is the number again?

THE WITNESS: 1,095,425, 1,095,426, 1,095,427, those three.

By MR. KRESEL:

Q. 42. Have you got that, the number is 1,095,425, 1,095,426 and 1,095,427, is that right, Doctor?

A. Yes, that is it. I think that is all.

MR. KRESEL: Just those three?

A. Here is another one, No. 884,919. Is it in the

list? No, that is not in. No. 884,920; no—they are not in. I think that is all. That is all. I cannot find any others but these three.

By Mr. Anderson:

Q. 43. Doctor, you spoke of several classes of patents included in the list so seized; among others, the Haber-Bosch patents as you described them?

A. Yes.

Q. 44. Will you state briefly what is the general character of those patents; that is, what they are intended to cover and what they did cover?

A. These patents for the Haber-Bosch process are a process for fixed nitrogen. Nitrogen, which you know, is about four-fifths of the air, and nitrogen is valueless when in this form. It must be chemically combined in some form or other- and then it is converted into a very valuable fertilizer, and the demand for fertilizers has increased every year and it has heavily increased every year.

Many attempts have been made to combine the nitrogen of the air to form fixed nitrogen, as it is called, and this Haber process is one of these processes which is for such a fixation of nitrogen; and I can say that the process has proved the most efficient of all the processes which have hitherto been invented. It is the only one that has come to stay, and it is based on the fact that the nitrogen is combined with hydrogen. It is the gas which is contained in illuminating gas, and by the influence on certain solid masses, so-called contact masses, and thereby ammonia is formed, which is a gas which is dissolved in acids, sulphuric acid or hydrochloric acid, and is traded as ammonium sulphate, ammonium chloride, and so on, and forms a very valuable fertilizer.

Q. 45. How many of those patents covering what are known as the Haber-Bosch process were included among the patents which you have identified as having

been seized, which you claim to be the property of the Badische Company?

A. Taking all the patents that belong here too, not only those which have been registered by Professor Haber, but those for machinery, for apparatus, and for the conversion of gaseous ammonia into the salts I have spoken of just now, and for converting ammonia into nitrate, another form of fixed nitrogen, and for preparing the hydrogen which is necessary for its preparation in the whole class of patents which belong thereto, there are about 58.

Q. 46. 58 patents?

A. 58.

Q. 47. Are all these patents in commercial use at the present time?

A. Not all of these.

MR. KRESEL: In Germany, did you say?

MR. ANDERSON: I will come to that.

MR. KRESEL: At the present time?

MR. ANDERSON: I will say 1917?

MR. WARFIELD: Do you mean patents?

A. (Continued.) For more than ten years.

MR. ANDERSON: If you gentlemen will wait a little while, I will bring out what you want. If I do not, you can bring it out on cross-examination.

Q. 48. Were those patents in use in Germany, commercial use in Germany in 1917?

A. Yes, they were in use in 1911 and 1912.

Q. 49. Are they in commercial use in Germany today?

A. Yes.

Q. 50. Do you know whether they had been used in America in 1917?

A. I do not know. Some hints are given somewhere in the periodicals that American firms made experiments along the same lines.

Q. 51. Doctor, do you know how much ammonia,

or whatever the product is, that is produced from these patents, is now being produced in Germany annually under these patents?

A. The amount of ammonia, ammonia salts, that is being manufactured now in Germany corresponds about to 300,000 metric tons.

Q. 52. Each year.

A. 1,000 kilograms each.

Q. 53. Each year?

A. Each year, yes. Apart from strikes and so on, the capacity of the plant is about 300,000 tons or more.

Q. 54. Are you informed as to the commercial value of patents of this character?

A. Yes, I am informed.

Q. 55. In your position as assistant manager and formerly chemist, still chemist of the Badische Company, have you had to deal with the question of the commercial value of patents?

A. Yes, in our patent department we did not only deal with applying for patents and following them through, but also with acquiring inventions and granting licenses and everything which belongs to the utilization of patents; and we are often discussing the value of patents.

Q. 56. What was the fair commercial value of these so-called Haber-Bosch patents, the 58 you mentioned, in the year 1917-1918?

MR. KRESEL: Just one minute, please, Doctor. Your Honor will entertain an objection to this question at this time, because of course, that goes to the entire substance of this man's testimony. We object to that on the ground that this witness has not been qualified to give testimony as to the value of the patents.

THE COURT: I will hear you, Mr. Anderson.

MR. ANDERSON: He has stated that for ten years he has been in the patent department of the

Badische Company; that he has been the assistant manager since 1920; that he has charge of the matters relating to the licensing and dealing with these patents and their production and knows their commercial value; has had to deal with the question of their commercial value. The question of the value of his testimony or the weight of his testimony is all a question for argument before the Court; but that undoubtedly, I should say, qualifies him to express an intelligent opinion as to their commercial value. If they wish to test that opinion, the basis of it, break it down, I suppose they are at entire liberty to do so. But he may express an opinion as to the fair commercial value of these patents as a man informed on that subject.

MR. KRESEL: If your Honor will permit me, this witness has so far testified that he has no knowledge of these Haber patents having been used in America. Certainly, what the value of these patents was in Germany in 1917 is not going to help us in this case. The question here is going to be as to the value of the patents here in the United States, in 1917—in 1919 rather, when they were sold. This witness has not shown any familiarity with the situation in the United States with the position of the art, with the use of these patents here in the Unted States. On the contrary, he has said that he simply heard in some periodical that some attempt had been made to use a similar process. He has not stated even that the Haber process was used here.

We therefore contend that the witness is not qualified to give any opinion as to the commercial value of the patents in the United States, and we contend that the value thereof in Germany, under conditions which do not prevail here, and to peo-

ple who have peculiar means of making use thereof, is not a test by which we can arrive at a conclusion as to whether a price paid here was or was not adequate.

THE COURT: It seems to me, Mr. Anderson, that the question lacks a proper foundation at the present time, for two reasons. I make this statement, not on a thorough consideration of the issues involved by the pleadings in this case, but from a general impression that I gather from the issues in this case, from the various matters that have come up pertaining to it. But upon that slight knowledge, my impression is this: That you are asking for an abstract value of the patents; that you are asking for an abstract value with regard to the patents in Germany; that you are asking for an abstract value with regard to the patents in Germany in 1917.

My thought is, on the information that I now have, that the only value that will be of interest or vital in this suit is the value in America, the value in America at the time of the sale, whenever it occurred; 1919, Mr. Kresel?

MR. KRESEL: 1919, sir.

THE COURT: That value in America in 1919 of these patents would not be an abstract value, but would be the fair market value of these patents.

For those reasons, I am under the impression, Mr. Anderson, that the answer as given would not be relevant, material or helpful in the final determination of the case. If you want to lay further foundation, you may. If not, I shall overrule the objection and allow you to take the testimony; overruling the objection solely on the theory that I am not wholly informed, but allowing the testimony to go in so that you may press

your objection at a later stage of this case, Mr. Kresel.

Mr. Anderson: I rather concur in your Honor's view. You were probably reversing the order. I was going to ask the questions to bring it up to 1919 in America; but probably in the view that your Honor takes, I should have laid that foundation further.

The Court: You withdraw the question, Mr. Anderson?

Mr. Anderson: I withdraw the question for the present.

Q. 57. Dr. Holdermann, under these patents so-called Haber patents, would it have been practicable for a competent chemist to have manufactured the products which you have described as being produced thereunder, in the United States, by use of the patents?

A. Of course, it must have been.

Q. 58. All these patents disclose the full process, the methods of manufacture, both chemical and physical in connection therewith?

A. Each of the patents discloses fully and frankly the invention for which it is; which it claims. There are, of course, in the manufacture of ammonia some steps which are of public dominion, and they are not disclosed in the patent; some steps in the manufacture of ammonia belonging to the old art, in the prior art, and that is not disclosed in the patent, of course. The patents relate to new inventions simply.

Q. 59. In other words, the patents covered the methods of the new invention of producing the elements out of which the ammonia was produced by well-known processes when you had those elements; is that true?

A. Yes.

Q. 60. With those patents, then the products which you have mentioned, ammonia and the other

products described, and the sulphates, could have been produced in each case without any difficulty by competent chemists; is that true?

A. Yes.

Q. 61. Are you familiar with the extent of the use of those products in the United States?

A. I already mentioned that they had been used to a certain extent.

Q. 62. I mean ammonia and the other products?

A. (Continuing.) By an American firm, but Mr. Kresel was wrong in assuming that this was the only knowledge of mine of the state of the art in America.

THE COURT: I did not quite hear. Were you trying to get the witness to answer as to the use now or prior?

MR. ANDERSON: I said 1919.

THE COURT: Will you repeat the question?

(Question repeated by the stenographer.)

A. It relates to the state of the art before 1919.

Q. 63. Now, are such products as ammonia, as produced under these patents, in common use in the United States for commercial and fertilizer purposes?

A. Now?

Q. 64. Yes, and were they in 1917 and 1919?

MR. KRESEL: I do not quite understand the question. Are you asking him whether products produced under the Haber patents were in use?

MR. ANDERSON: No, I am asking him whether ammonia, such as may be produced under the Haber patents, is an article of general commerce in the United States, used for commercial and fertilizer purposes, if he knows of it, and was it so used in 1917 and 1919. Your Honor will understand, I am not putting this evidence in the regular order; I will prove that by other witnesses.

THE COURT: Yes, I understand you are embarrassed by that.

MR. ANDERSON: I will prove all that by other witnesses. I am trying to do the best I can.

THE COURT: At the same time, Mr. Anderson, I shall have difficulty with getting the value out of this and probably the other side will, unless they know, unless they are informed by you, from time to time as you go along, of just what point you are directing this testimony to.

MR. ANDERSON: I will be very glad to do that.

THE COURT: I think that is your difficulty, Mr. Kresel.

MR. KRESEL: Entirely so.

A. Yes, they are being used to a very large extent.

Q. 65. And were they in 1919 and 1917?

A. Yes, and long before.

MR. ANDERSON: Without putting this on the record, I will, of course, at the proper time, by American witnesses, prove the commercial uses and values of all the products produced of this character. I only want to lay a foundation for him to express an opinion as to that.

Q. 66. Now, Doctor Holdermann, taking into consideration the character of these products, their commercial use or capacity for commercial use in the United States, which you have mentioned in the year 1919, and your knowledge of the subject, as derived from your handling of these patents for your company, will you say what was or what would have been the fair commercial value of the so-called Haber patents in the year 1919, at which time the alleged sale in this case took place?

MR. KRESEL: Just a minute, Doctor, please. If your Honor please, we do not yet consider that the proper foundation has been laid for this witness to express an opinion as to the commercial value of these patents; but, understanding your

Honor's ruling heretofore made, that you will take the testimony subject to our right to move to cross it out later, of course, I cannot urge anything further.

THE COURT: Did you want to address yourself in reply to Mr. Kresel, Mr. Anderson?

MR. ANDERSON: I did not, further than to state that of course at the proper time we will prove more clearly the extent and character of this use. My purpose now is only to show that the witness has a knowledge of the commercial use of these products, and that his position as a patent expert in charge of the office of his company in Germany dealing with these patents, and their commercial uses in both Germany and here, enables him to speak with reasonable accuracy as to their commercial value. I might say that I will follow that up by asking the direct question what his company would have paid for these patents at that time.

MR. KRESEL: Yes, but Colonel Anderson, it seems to us that the value of these patents should be determined in relation to our situation here in the United States and not in relation to the ability of the Germans to make use thereof. Now, it seems to me that no foundation has been laid as to the conditions here in the United States in April, 1919, when this sale was made, as to the ability of our manufacturers to make use of these patents.

This witness has not yet stated that anybody used these Haber patents here. At least I have not so understood him to say.

THE WITNESS: Yes, I said so.

MR. KRESEL: I have understood him to say that he has known of some one firm here attempting to manufacture nitrogen or get nitrogen out of the air, but I have not understood him to say

that that was done under this Haber patent. Colonel Anderson, if that is the fact, if I may suggest, I wish you would develop that end of it; but until it is made to appear what the conditions were in the United States as to our ability to use these patents or as to the results of any attempts to use them theretofore, it seems to me that this witness has not anything upon which to base an opinion as to the value of these patents to anybody in the United States.

At the proper time we shall show your Honor of course that the Germans have greater facilities to make use of these patents than people in the United States have.

Moreover, may I also point out, if your Honor please, that there is at least in my mind some confusion as to which patents the witness is now testifying about, whether it is the German Haber patents or whether it is the Haber patents that were filed here in the United States. I think, Colonel, if you make inquiry, you will find that these patents were not similar. At all events, I am only pointing that out as indicating that there is some confusion.

THE COURT: Shall we clear that up first, Mr. Anderson?

MR. ANDERSON: I will, if your Honor please; and I would like to say further, as this is going on the record apparently, and I do not want to leave it without answering, the value of these patents arises from two sources, at least, to say nothing about others. One is the right to manufacture the goods under the patent and the second is the right to control the sale of the goods under the patent. Therefore there might never have been a product manufactured in the United States; it might never have been licensed in the United

States. But the ownership of the patent in the United States, if the market for the product was large, would be enormously valuable, either to manufacture or to control the importation. Therefore, the market being here and the patent presenting a condition under which the stuff can be manufactured or its importation or sale controlled, which is the same thing, because you can license the control, the value arises from those sources. Now Mr. Kresel is addressing himself to the weight of the testimony and not to its admissibility. It may be that unless we develop additional facts showing the application of this testimony to conditions in the United States in 1919, that the weight of the testimony may be or may not be affected. That will be a question of argument before your Honor when you come to consider the testimony. But it is admissible for what it is worth, the man having shown a knowledge of these conditions. I will clear up the question I asked the witness. I do not always understand his answer very clearly. I asked the witness this question, whether or not under these patents as filed in the United States—I have not said anything about the German patents—any person in the United States could manufacture these articles which he described as being produced under these patents; and he said that any competent chemist could do so.

Now therefore that being the case, it is not material whether the German patent or the other patent maybe identical in terms, provided the product could be produced under the patent as filed in the United States by a competent chemist. Then comes the question whether there is a commercial market or whether that market can be controlled through the use of this patent.

THE COURT: I believe I understand you, Mr. Anderson.

MR. KRESEL: Your Honor, would you pardon me a minute?

THE COURT: Yes, I will hear each side.

MR. KRESEL: Colonel Anderson has spoken of the right to control the sale of imported articles made under this patent. It has not yet been made to appear that this was a product patent. On the contrary we think it is only a process patent; so that importations of the article would not come under the patent here.

MR. ANDERSON: I understood him to testify that it covered both product and process.

MR. KRESEL: No, the witness was not asked and did not testify to anything like that.

MR. ANDERSON: I certainly understood him so to say in describing the patent.

THE COURT: I did not get his answer. Apart from that, is there this difficulty? It probably does not apply now, but the arguments of counsel would seem to bring this question to my mind, particularly your statement that you propose to follow it up by ascertaining from this witness what his company would be willing to pay therefor. You understand that I am practically in complete ignorance of the situation, so I will ask you to bear with me and help me on it if you will just a moment.

Could his company—I am asking now purely as a matter of law—have been a competitive bidder in the sale of these patents in 1919?

MR. ANDERSON: I do not think so, sir.

THE COURT: Then does that present a question as to whether his answer to that inquiry could be of any value here?

MR. ANDERSON: I do not think it does. If the

company could have been a competitive bidder, it would have gladly paid this price. Therefore, it regarded the commercial value as that amount. That is one of the evidences. It may not be conclusive evidence. It may have been barred by certain conditions then existing by the war—I do not recall how far—because there were a lot of licenses issued and things of that sort.

THE COURT: I am wondering this, Mr. Anderson, if you will help me just a bit there.

MR. ANDERSON: Yes, sir.

THE COURT: As I understood you a moment ago, you are going to develop eventually the market value, a market value.

MR. ANDERSON: Yes, sir.

THE COURT: As I understood you.

MR. ANDERSON: So far as I can do it, sir.

THE COURT: So far as you can. Now, if the German bidders were barred by operation of the law upon bidding in that market, then might not what the German corporations might be willing to pay or might be willing to have paid for those patents, mislead us rather than guide us in a determination of the market value? Because, if what the Germans would have been willing to pay, if they could have been bidders, would have produced a higher price, it seems to me at the moment that possibly having them tell us what they would have been willing to pay, could they have been a bidder, rather confuses than clarifies.

MR. ANDERSON: If your Honor please, I will undertake to answer your Honor's question. This is of course dealing with a subject that I confess entire igorance of, that is patents. I do not know anything about patents in chemistry. Here, the elements of value, however, are well understood. They are derived from various sources, all of

which must be considered. What one person is willing to pay is evidence of value. What one person might be willing to pay would be evidence of value. Another is, what are the commercial advantages that can be derived from the use of the patent? That is an element of value. That arises from two sources: experience, and the estimate of experts as to what use can be made and what the value of that use is.

In the last analysis, evidence of value of a thing of this kind is largely a matter of the judgment of the experts, in which they may differ unquestionably. Therefore the various elements may be developed.

Now I want this witness to state what in his judgment the patents here, sold in the United States, taken in connection with the market of the United States, their capacity for production and their capacity for control,—what in his judgment, as a man dealing constantly with this subject, and familiar with these patents and their capacities, would be worth, would have been worth in 1919. I do not care to whom they are worth it. If there was any person in the world who would have given that price, we have that value.

THE COURT: Any person in the world who could have been a bidder.

MR. ANDERSON: I do not think it is necessarily confined to a bidder, if it was a bona fide desire to get them at that price. He might have bid through some one else. If he is willing to give that price, that is evidence it may be worth that price. It may not be conclusive evidence, but it is evidence.

THE COURT: You understand I am going to take your testimony.

MR. ANDERSON: Yes, I think we have argued

more the value of the testimony than its admissibility.

THE COURT: I am not sure, and the reason I am asking you these questions——

MR. ANDERSON: I am very glad to have you do it, if your Honor please.

THE COURT: (continuing) is for my personal benefit, my official benefit, but mainly so that if this objection is pressed eventually, and I should decide to rule against you on any of these grounds I should be sorry if I had not presented these grounds to you now, so that you can meet them at this time rather than after the witness is gone.

MR. ANDERSON: I think your Honor is under a great handicap in not having the case presented in a proper way, and I hope you will not hesitate to ask me any questions. I find myself handicapped in examining this witness, because I will prove these things by somebody else.

THE COURT: But the difficulty there is that even if you had proved this very evidence by as many witnesses as you could put on the stand, the testimony of those witnesses would not in itself enable this witness to answer your present question. That is, the testimony of the other witnesses might be valuable, but they would not establish any value of the right of this witness to answer that question. I have my doubts about his being in a position at the present time, from the testimony given by this witness, to answer this question. I think I have indicated the grounds of those doubts and you may take the answer.

MR. KRESEL: Your Honor will pardon me just a minute? May I make the suggestion that Colonel Anderson develop from this witness as to whether he was present in the United States during 1917, 1918, and 1919.

THE COURT: You may, if you desire.

MR. KRESEL: I do not want to interrupt Colonel Anderson's examination of this witness.

THE COURT: You may if you desire, Mr. Kresel, prior to that answer being taken, cross-examine him as to that particular point.

MR. KRESEL: If you will permit me. May I, Colonel?

MR. ANDERSON: You may, yes, sir.

By MR. KRESEL:

Q. 67. Dr. Holdermann, in 1917 were you in the United States?

A. No, there was a war between Germany and the United States. But that is not the only way of getting information.

Q. 68. Won't you just please answer my question?

A. Yes.

Q. 69. In 1918 were you in the United States?

A. No.

Q. 70. Or in 1919?

A. No.

Q. 71. When did you first come to the United States subsequent to 1919?

A. Last year, 1922.

Q. 72. Prior to 1922, had you ever been in the United States?

A. No.

MR. KRESEL: That is all I desire to ask him at this time.

By MR. ANDERSON:

Q. 73. Dr. Holdermann, I understood you to describe the character of these patents, what they covered. I would ask you whether they covered, the 58 patents, production of products and processes of production? Explain that, please, to the Court, just what they did cover, if you can do so. I do not mean to go

into technical details. I just want you to say what they covered in a general way.

A. These patents covered certain improvements, first, for the starting material, hydrogen and nitrogen, and for the art of combining these two, to form ammonia; conditions which are necessary to effect this combination; then means for separating the ammonia from the mixture which is formed, transforming the ammonia into tradeable form, in which it can be sold or treated, into salts.

MR. KRESEL: May I interrupt you, Doctor. Will you permit me, Colonel Anderson?

MR. ANDERSON: Yes.

By MR. KRESEL:

Q. 74. What we want to find out, Doctor, is this. Do you claim that under those Haber patents no one could manufacture ammonia unless he had a license from you?

A. Yes, of course.

Q. 75. Is that your claim under the patent?

A. Every patent creates a monopoly and nobody can manufacture under these patents unless they get a license. Otherwise, he infringes the patent.

Q. 76. You did not understand. We understand your claim to be, that no one could manufacture ammonia by the Haber practice without getting a license. But my question is, do you contend that no one in the United States was permitted to make ammonia or sell it here unless he got a license from your company, no matter how it was made? You do not claim that, do you?

A. I do not think there is another commercial way of making ammonia synthetically. No process has been known so far.

THE COURT: Will you repeat the question and see if he can answer it directly.

(Q. 76. repeated.)

A. No, we do not claim that. Ammonia can be prepared by coke-ovens. It has been manufactured that way for a hundred years. Of course, that depends on the production of coke.

THE COURT: Then is it clear that none of these patents were product patents; that they were all process patents?

MR. ANDERSON: No, sir; it is not clear. This particular patent did not cover the sale of ammonia. I will ask this question.

By MR. ANDERSON:

Q. 77. Was there any other commercial method of making synthetic fixed nitrogen and ammonia in quantities at the time these patents were sold in 1919, so far as your knowledge goes?

A. No.

MR. KRESEL: Where?

MR. ANDERSON: Any where.

Q. 78. Was there in America, so far as your knowledge goes?

A. Not in America, and not in other countries.

MR. KRESEL: That does not answer the question, I submit. That does not make it a product patent by any means.

THE COURT: If the product could not be manufactured save by this process, if there was no other known process——

MR. ANDERSON: If you could not use the process, you could not make it. All that enters into value. It is argumentative as to what it is. But that is all I want.

Q. 79. Dr. Holdermann (subject, of course, to objection), I wish you would state from the knowledge which you have already indicated, what, in your judgment was the fair value of these 58 so-called Haber patents?

MR. KRESEL: The fair market value?

Q. 79. (continuing)—The fair market value, yes, of these 58 so-called Haber patents in America, that were issued in America in the year 1919, when they were seized and transferred to The Chemical Foundation?

MR. KRESEL: If your Honor please, we object to that question upon the ground that this witness has not been qualified to give testimony as to the market value of these patents in the United States.

THE COURT: I think I understand your grounds; unless you care to discuss it further on either side.

MR. KRESEL: No, your Honor.

THE COURT: Because I have indicated the doubts I have about the admissibility of this testimony on the foundation that has been laid by this witness. I have indicated that so as to establish a better foundation, if that is available, from this witness. I will overrule the objection solely on the ground that all objections going to substance are to be overruled and disposed of at a subsequent stage of this case.

MR. ANDERSON: I am going to ask a good many questions that will probably come under the same line.

THE COURT: I understand.

MR. ANDERSON: Of course, we will discuss that at the proper time.

THE COURT: If you prefer, Colonel Anderson, that I make inquiries as you go along and express doubts, I will be very glad to do so.

MR. ANDERSON: I will be very much obliged to your Honor if you would, because we are proceeding in such a way here, that it is almost im-

possible for me to keep in mind what are the issues.

THE COURT: Then there will be no objection to discussing any question of substance on either side.

MR. ANDERSON: Certainly not. I would be very much obliged if you would.

Q. 80. You can answer that question now, subject to the objection?

A. After careful consideration of all the circumstances that I could get, not from personal presence here in the United States, but from all sources, periodicals, and all other sources, I think a very conservative estimation of the market value of these United States patents for the Haber ammonia processes, and no others, is about seventeen millions of dollars, for these fifty-eight.

Q. 81. Are you speaking now as of the year 1919?

A. 1919, at the date of transfer.

Q. 82. Do you have to deal with the purchase of patents by your firm?

A. Yes, that is all in the charge of our patent department, purchase and selling, licenses, and everything which is connected with patents.

Q. 83. If your firm had not had any interest in or owned these patents in the United States in the year 1919, would you have been willing to pay that price for them?

A. I think I would have paid this.

Q. 84. You are speaking now entirely of the United States patents, are you?

A. Of course, nothing else.

Q. 85. You spoke of the synthetic tanning materials. Approximately how many of the patents of your company which were seized by the United States, covered synthetic tanning materials?

A. There are not so very many for synthetic tanning materials, but they are very important. I think they will be about ten patents for this field, ten to fifteen.

Q. 86. Were those patents in commercial use in 1919?

MR. KRESEL: Where?

MR. ANDERSON: In Germany.

A. They have been to a certain extent, but to a very small extent. They have been developed just before the war. Then the war broke out and the connections with your country have been interrupted and patents could not be developed. It was just in the beginning.

Q. 87. Were these patents as filed and granted in the United States, substantially the same as the patents covering the same processes or products granted in Germany?

A. Yes, practically the same.

MR. KRESEL: How can this witness say? It does not appear that this witness has any knowledge upon the subject. I do not think we should take his conclusions.

MR. ANDERSON: But he is the man who handled them.

MR. KRESEL: He is the man in Germany who knew about the German patents; but whether the United States patents filed here—it does not appear even when they were filed—were the same as the German patents, has not yet been made to appear.

MR. ANDERSON: If he does not know, he can say so. If he does know, he can say so.

THE COURT: My difficulty is this, whether the best evidence of that is not the copy of the German patents themselves.

MR. KRESEL: Both patents.

MR. ANDERSON: I think it is very probable, if we were proving title, that would be true; but if he handled, if he secured both, he can say if they are substantially the same.

THE COURT: Are you not asking him for a conclusion, not a fact?

MR. ANDERSON: No, sir; if I may submit to your Honor. It seems to me that this witness has testified that he handled the procuring of these patents in foreign countries as well as in his own country. Now, if he handled the procuring of those patents, he can say whether they were substantially the same in the United States as in Germany. I can, at the proper time, if necessary, produce all these patents or extracts from them. I do not assume anybody would want them. But if he handled both, he can testify they are substantially the same. As to what they contain, as to what the patents contained in terms, it is quite probable that the patent itself would be the best evidence, but that they are similar in terms, and similar in character and cover certain rights, I think his testimony would be entirely admissible because he handled them. He said that clearly before, and I am going to have him say that over again.

MR. KRESEL: Of course, your Honor knows vastly more about patents than I hope to know; but your Honor certainly knows—that much I learned from my brother Warfield last night—that the value of a patent may very largely depend upon the claim contained in the patent and the claim in the American patent may be vastly different from the claim in the German patent.

How does it help us to have this witness conclude, without documents before him, that the two patents were substantially alike? It does not

lead us anywhere. Wherein is the difference, if they are only substantially alike? Where is the difference? How is the Court going to judge whether that difference is material, upon the question of value? I think your Honor has well indicated that if this is material at all, the two patents ought to be presented.

MR. ANDERSON: I think, sir, that we are discussing—if I may submit, your Honor,—we have been discussing all the morning the value of evidence as distinguished from evidence, the admissibility of evidence.

THE COURT: We will take a recess today, Colonel Anderson, at about twenty-five minutes after ten by that clock, by reason of a noon-day luncheon engagement I have, and then we will begin again approximately at 2 o'clock.

MR. ANDERSON: Yes, sir.

THE COURT: We cannot tell just exactly when that luncheon comes.

MR. ANDERSON: I would like to go back and find out what was the question which I asked the witness. I believe I was arguing the question before your Honor when we stopped.

THE COURT: Yes.

MR. ANDERSON: What I want to say is this—I want to add to what I did say—that while I do not have to say because it has been perfectly obvious that I know nothing of the chemical side of patents, and do not intend to, yet the fact is that this witness is an expert in handling patents, and was the man who represented this company who acquired these patents in Germany and in the United States. He has testified to that, and will testify so again. Now, what the value of his evidence will be when we get through with producing chemical evidence of this stuff in the United

States, will be a question of argument; but for what it is worth, it is admissible, as one of the many factors that will be presented here tending to show or not to show, the value of these patents at the time they were sold by the United States to The Chemical Foundation. I do not want at this time to argue any question of the weight or importance of this evidence.

THE COURT: No.

MR. ANDERSON: Only that it is admissible on the record. I am perfectly willing, and it will save the time of the Court, and save the time of Counsel, to have your Honor reserve your ruling on any of these questions. I think I am entitled to have the witness answer the questions.

THE COURT: I will rule on questions of substance, but the only reason I am making inquiry is so that if you have overlooked something, you may show it in your testimony.

MR. ANDERSON: I cannot recall this witness. He will be in Germany. Your Honor is quite right. You want to get at the facts, and the Government wants to get at the facts, whatever they are.

THE COURT: On that ground, the objection will be overruled. My thought is that in the absence of those patents, the other side had no opportunity to show that this witness may be mistaken in his conclusions; but upon the grounds under which the testimony of this witness—under the arrangement by which the testimony of this witness is taken, the objection is overruled.

A VOICE: Do you want that question, Colonel Anderson?

COLONEL ANDERSON: Yes.

A VOICE: "Q. Were those patents as filed and granted in the United States, substantially

the same as the patents covering the same processes or products granted in Germany?"

MR. KRESEL: Pardon me a minute. I do not understand this arrangement of stenographers. I had understood that the stenographers at this table, were the stenographers appointed by the Court to report this proceeding.

THE COURT: Is not the stenographer who read the question, one of your gentlemen, Mr. Smart?

THE OFFICIAL STENOGRAPHER: No.

MR. ANDERSON: Then I will ask Mr. Smart.

The question was repeated by the stenographer as follows:

"Q. Were these patents as filed and granted in the United States substantially the same as the patents covering the same processes or products granted in Germany?"

THE COURT: I have not any objection, Mr. Anderson. You may have as many men taking down the testimony as you like. They have no standing in this Court, and the testimony and the notes so taken will be only for your personal use and will not constitute the record.

MR. ANDERSON: That is understood. The record will be made by the stenographer your Honor has appointed under the conditions which we have already discussed.

Q. 88. Now, will you answer that question?

A. Yes. Perhaps I may answer at length, so that it can be understood.

Q. 89. Go ahead and answer any way as you please.

MR. KRESEL: Not as broad as that.

MR. ANDERSON: If he goes off the track, you can stop it.

A. So far as it will help the case; I can tell you

when an invention is made in our factories, the invention goes to the Patent Office, and the inventors come to our patent department, and there discuss the inventions, and I and my assistants are drafting the specification for the German applications, and I was personally in all of these German applications for these tanning substances, and after a while, we were filing the applications abroad, and I took the German texts, and I make up the foreign texts in pretty nearly the same language. There are only changes which are required by the difference in the patent laws, and apart from these strictly technical differences, there is no change in the material part of the application, and I have drafted a good part of these tanning, or nearly all of these American patents for tanning, and I cannot find that there is a substance which is claimed the process, on the technical part of it, which is quite the same as that in Germany. Is that sufficient? I think that is clear.

Q. 90. Could a competent chemist or manufacturer check the patent, as filed in the United States, or granted by the United States and manufacture the product which is manufactured under the same patent in Germany?

MR. KRESEL: One minute again, if your Honor please. That is calling for this witness's conclusion, and it is merely speculative. It all depends upon the ability of the chemist.

THE COURT: Is not the test really whether the patents make such disclosure as to enable one skilled in the art to produce the result?

MR. KRESEL: Exactly, that depends upon the patents and upon the state of the art here.

THE WITNESS: No, upon the chemist.

MR. KRESEL: In other words, how does it aid the Court to have this witness say that assuming

a competent chemist at a certain state of the art—could use this patent to advantage?

THE COURT: He does not say to advantage in this question. He says to make such disclosure, there is nothing omitted, as I understand.

MR. ANDERSON: That is correct.

MR. KRESEL: The question was, as I recall it, whether a competent chemist could, by using the process as described in the patent, produce the product.

THE COURT: He is merely asking whether the patent is complete, as I understand it, because there is something omitted if there is one step omitted, that keeps the disclosure from being such a disclosure——

MR. KRESEL: As would make it useful.

THE COURT: (continuing)—to enable a person skilled in the art to reproduce the result intended by the patent, then, of course the patent is wholly valueless. Now, this question is, as I understand the purpose, directed to that point; is that correct?

MR. ANDERSON: It is correct, to that point, to show it that the entire process, or whatever it is in the patent, is a disclosed patent in the United States, to the end that it can be commercially used in the United States, and the patent transferred. I do not imagine that these gentlemen, since they bought these patents, will attack their validity. If they do, we will discuss that question when we come to it.

MR. WARFIELD: We should not try to prove it in this way, by various conclusions, and mostly leading questions, and an incompetent witness.

THE COURT: Is there anything further in the discussion? The objection is overruled on the ground indicated.

Q. 88. Go ahead—go ahead and answer the question as to whether it was a full disclosure of the process, so a person in the United States could manufacture under that patent, the same process, the same materials manufactured in Germany?

A. I can only repeat all what I said in relation to the ammonia processes, that our patents are full and frank disclosure of the invention, as is required by the patent law. A patent which does not fulfill this condition is void, and we have no interest in applying for void patents.

Q. 89. Now, Doctor, are you familiar with the extent of the commercial use of these so-called tanning patents in Germany?

A. Yes, we have had a very wide use, and are now being in use to a large extent.

THE COURT: We will take a recess now, Colonel Anderson, to 2 o'clock, which will be 1 o'clock by that clock.

AFTER RECESS.

KARL HOLDERMANN resumes the stand.

Q. 90. Dr. Holdermann, at the time of adjournment, we were engaged in questions as to the so-called tanning patents included among the Badische patents seized by the Government and sold to The Chemical Foundation. I do not recall whether I asked you the number of patents included in that classification which you made, and I would be glad if you would state the number and if you can do so, put the numbers thereof on the record, identify them from the exhibit with the bill which we referred to this morning?

A. There are some thirteen patents for the tanning art, artificial tanning.

Q. 91. Can you give the numbers. I asked him, Mr. Kresel, to make out a list of the numbers and save calling them off as it is very difficult for the stenographer, and I will hand him this list.

MR. KRESEL: Yes.

Q. 92. Have you checked over the so-called Badische patents included in the list in the bill, and identified the numbers included in your list, included as tanning patents; have you checked them over?

A. I have checked them over.

Q. 93. Will you hand to the stenographer a list showing the serial numbers of those patents to which you now refer. Just hand him this list.

A. (Witness handing list as follows):

1,421,722,
1,414,045,
1,336,759,
1,289,280,
1,281,494,
1,278,229,
1,254,364,
1,237,405,—$5000 in 1913.
1,216,612,
1,203,069,
1,191,480,
1,107,107,
1,089,797,

THE COURT: Any objection, Mr. Kresel?

MR. KRESEL: None at all.

Q. 94. You include that as part of your answer, as identification of the patents; you can just put that on the record?

A. Yes.

MR. ANDERSON: There is no objection.

Q. 95. Are these so-called tanning patents, patents covering product, as well as process?

A. Yes, as well for new products as processes in

manufacturing them, as for processes for application from the tanning of the products.

Q. 96. How many of these patents were in actual use, commercial use, for manufacture, prior to 1907, do you recall?

MR. KRESEL: Where?

MR. ANDERSON: In Germany.

MR. KRESEL: In Germany?

MR. ANDERSON: Yes.

A. Prior to 1917, I think we used about—we produced about two new products.

Q. 97. Two new products?

A. Two new products, and now there are three or four products which are made.

Q. 98. In 1919, how many were in use in Germany?

A. I think three, three.

MR. KRESEL: The question is—how many patents were in use?

THE WITNESS: That is another question.

Q. 98. How many of those three patents, these patents you have listed?

A. Thirteen products.

Q. 99. Three products manufactured under these tanning patents?

A. Yes, and of course, the use of these products was covered by other patents, so that more than three patents may have been involved.

Q. 100. Yes.

A. Than those for the production, and those for the use as tanning product.

Q. 101. The products that you refer to as manufactured under this patent, were all manufactured under the thirteen patents that you mention?

A. Yes, all of them.

Q. 102. They cover the whole situation as to these three products?

A. Yes.

Q. 103. Were any of these products exported to the United States prior to the time that we went into war?

A. Yes, some of these products were imported before the war, but the export did not amount to much, because the whole field was just in the stage of development, I think the field of invention originated in 1911, or about so, and of course, before the war, it could not be fully developed.

Q. 104. Did your company export any of this product to the United States in 1913, before the World War began?

A. Yes.

MR. KRESEL: Will you identify the product for us, what is the name of it?

Q. 105. State the name of the product?

A. I do not know under which name it is traded here, but the trade name in Germany is Neradol D.

Q. 106. Did your company sell that product in the United States?

A. Yes, we imported it.

Q. 107. How much did you realize and profit from the sale of the product under that patent, or that particular product in the United States in the year 1913?

A. The net profits?

Q. 108. Yes?

A. In the importation of this product into the United States?

Q. 109. Yes.

A. It amounted to 21,478 marks, that is, about five thousand dollars.

Q. 110. When you refer to Marks, you refer to gold marks?

A. Yes, gold marks in 1913.

Q. 111. Was that one of the more valuable products that has been developed under these products?

A. It is a valuable product. As to these properties, on the products we have brought into the sale afterwards, they are much cheaper, and they are sold in much bigger quantities than the first product, owing to the lower price. The properties of this product are excellent.

Q. 112. Dr. Holdermann, assuming for the present that the patents granted or filed in the United States covering these tanning products are for all practical purposes and commercial purposes the same as those filed in Germany, and taking the facts which you have indicated and testified to, as a basis, what would you say was a fair commercial value of those thirteen patents in 1913, to your company?

MR. KRESEL: One minute, please. I object to the question as to form of inquiry. We object to it on the ground that the value in 1913 is immaterial.

MR. ANDERSON: Did I say 1913. I meant to say 1919.

MR. KRESEL: We object to the question further upon the ground that the witness has not been sufficiently qualified to express an opinion upon that question. It is assumed in the question that the basis has been established. As far as I can see, the only basis testified to by the witness was that in 1913, they exported a product, which he has described, from which his company made a profit of five thousand dollars.

MR. ANDERSON: To the United States.

MR. KRESEL: To the United States. Now, I claim that is not a sufficient basis upon which the witness can be permitted to give an estimate of the value of the patents in 1919 and the value in the United States under the conditions which he

has not described. It seems to me it is purely speculative.

THE COURT: I will hear Mr. Anderson.

MR. ANDERSON: Just a word. I had assumed the condition of the patents to be substantially the same, without further proof. I must assume that as a hypothetical question. I will assume, if desired, that the market exists in the United States, but I think the testimony is sufficient for that. If it is an essential fact and is not subsequently proved, of course, the question goes out. Whatever may be the value of this testimony upon the facts as stated is a question for discussion later, but it seems to me that this is one of the facts going to show, an essential fact going to show the value of these patents, tending to show their value; and if it does, why then, of course, we will introduce a great deal of evidence on this subject to fit up with this evidence. But at the present time, in anticipation, we can only take what this witness knows.

THE COURT: As I understand Mr. Kresel's objection is that the basis is so remote that the answer would be without any value and consequently inadmissible.

MR. KRESEL: If I may suggest, your Honor; if the Colonel desires simply the fact, the one fact that this witness can testify to, namely this $5,000 profit that they made in 1913, he now has that; and if he desires to use that as a partial basis for a question as to value to some other witness, he can use it. But as your Honor has expressed it much better than I have, the basis is so remote that any estimate that this witness may place upon the value of these patents would be absolutely valueless.

MR. ANDERSON: Is that not a question of the

value of the evidence rather than its admissibility?

THE COURT: My impression is it is not, Mr. Anderson. It does not furnish us sufficient facts as a basis to enable us to place any value, any official value upon any conclusion that this witness could draw. However, I will overrule the objection on the understanding that we have, that all objections are to be overruled and finally passed upon at a later stage of the case, after we have more fully understood the merits.

MR. ANDERSON: I think, if I may suggest, to get along, while I want Mr. Kresel's objection for the benefit of giving me notice of the objection, if he will just make the objection, stating briefly his grounds, I do not desire to argue it if your Honor is not going to pass upon it now. There is no use of my arguing upon it at this time.

THE COURT: Then, in order to expedite the matter, shall we just have the objections formally stated and then, if that suggests anything to you, you may amend your question or proceed as you deem proper.

MR. ANDERSON: Certainly.

THE COURT: And there will be a formal ruling upon each objection?

MR. ANDERSON: Yes, sir.

Q. 113. Will you answer now the question. What is your estimate of the fair value of these thirteen Tanning patents, the fair market value of these thirteen Tanning patents as of 1919 in the United States?

A. Considering that this is only for one product?

MR. KRESEL: Doctor, just answer the question. You have been arguing enough.

Q. 114. Let me put the question again. You

have testified that there were three products made under these patents?

A. Yes.

Q. 115. One of them was imported in 1913 before the war?

A. Yes, sir, where we made the $5,000.

Q. 116. That there were two other products developed under the patents that were valuable prior to 1919. Now I will ask you one other question. Are those products products of general commercial use in connection with tanning?

A. Yes.

Q. 117. And for the purposes for which this kind of stuff is used?

A. Yes.

MR. KRESEL: May we know what the products are?

Q. 118. All right, you can state the products, What were the products that were so developed under these patents?

A. The trade names, or what is your intention?

MR. KRESEL: I cannot hear you.

THE WITNESS: What is your question? What shall I state?

Q. 119. He wants to know what the products are, the trade names?

A. Neradol Ende and Ordoval, G. & G. G., two brands, not much different. These are the products.

By MR. KRESEL:

Q. 120. Yes, but what are they? Those are just names. What are they, shoe leather or silks?

A. These are chemical condensation products; sulphonic acids, so to say, and products which are covered by these patents.

By Mr. Anderson:

Q. 121. Are they synthetic tanning solutions?

A. Synthetic tanning materials; yes.

Q. 122. Taking the experience that your company had before the war interrupted this export, and your knowledge of the character of these patents, state to the best of your information and belief their fair market value in 1919 at the time they were seized by the Government and transferred to The Chemical Foundation?

Mr. Kresel: I must object to the question as to its form. This witness cannot testify as to his information and belief, if he is testifying as an expert.

Mr. Anderson: I said "to the best of his knowledge."

Mr. Kresel: You said to the best of his information and belief.

Mr. Anderson: I substitute "knowledge" for "information."

The Court: You are asking him now as an expert?

Mr. Anderson: I am, as to what he thinks these patents were commercially worth.

Mr. Kresel: We raise the same question that we did before, and I assume the disposition is as before.

The Court: There will be a formal ruling, overruling the objection.

A. After my knowledge, the market value of these patents at the time of transfer was as a minimum $300,000. I doubt if my company would have sold it for that price.

Mr. Kresel: I move that the latter part of the answer be stricken out. He has given his estimate as to the value.

THE COURT: Any opposition to the motion to strike out?

MR. ANDERSON: No.

THE COURT: The latter portion of the answer may be stricken out.

Q. 123. If your company had been offered $300,000 for these patents in 1919, would you as a patent expert, as you have testified, advise its acceptance?

A. I doubt whether——

MR. KRESEL: One minute, Doctor. I object to that upon the ground that it is a hypothetical question. There is no foundation laid for it and it is immaterial and irrelevant as to what this witness' company might have done. It certainly is no basis for an estimate as to value.

MR. ANDERSON: It is what this witness will advise his own company. He is familiar with the whole business, as to what it would pay or would take for these patents.

THE COURT: I think that the answer called for by that question would be irrelevant and immaterial. I grant the motion to strike it out and you may take your answer under Rule No. 46, if you so desire.

Q. 124. I would be glad if you would answer the question subject to objection. The question was whether or not you as the officer in charge of the patent department of your company would have advised it to accept for these patents a price of $300,000 in 1919?

A. We should have regarded it as the ultimate minimum price and I doubt whether they would have sold it for that price.

Q. 125. Now, Dr. Holdermann, there are various other patents included in the list which you identified

this morning, which you described generally as dye and dye process patents; that is, chemicals used in dyes. Are those patents both product and process patents also?

A. They include most various things, products and process for manufacturing the products, processes for dyeing the manufactured products and auxiliaries for dyeing some intermediates which are used for the reduction of the dye stuffs and related things.

Q. 126. Then they cover both the product and the process for manufacturing the product; is that true?

A. Yes.

Q. 127. Can you state how many of these dye and dye process patents were in use in the United States in 1919?

MR. KRESEL: I submit, your Honor, that this witness, having already testified that he was not in this country prior to 1922, cannot have any knowledge as to how many of these patents were used in the United States.

MR. ANDERSON: Prior to the transfer?

MR. KRESEL: Yes, prior to the transfer.

MR. ANDERSON: He was the patent expert of the company that owned the patents. He ought to know.

MR. KRESEL: There was a state of war between this country and Germany for two years prior to this sale, and this witness certainly cannot have had any information during those two years as to what patents were or were not used.

THE COURT: The ruling on that question, I think, comes under our general plan. The objection is formally overruled.

Q. 127. (Continuing.) Go ahead.

A. I cannot say how many of these patents were in actual use in the United States right prior to 1919, but I can say that 65 of these patents are for prod-

ucts which have been imported by our firm into the United States. Does that answer your question?

Q. 128. Yes. But the exportation by your firm into the United States stopped with the beginning of the war in 1917, did it not?

A. Or before, yes.

Q. 129. I did not catch the number. How many did you say?

A. 65.

Q. 130. Are you exporting any of that product into the United States today, do you recall?

A. Yes, we are.

Q. 131. Could you say whether there was any increase in the use of these products during the period in which you were exporting into the United States prior to the war, from the time the patents were taken out? Those that were in use?

A. That is a general rule, that the use of a dyestuff or of a patented product grows or is subject to an increase during the life of the patent.

MR. KRESEL: That is simply a general rule, your Honor, and I think that ought to go out.

THE COURT: Any objection, Mr. Anderson?

MR. ANDERSON: No.

THE COURT: That may be stricken out. Will you repeat the question, Mr. Stenographer, and let him answer the question?

A. Yes, there was an increase.

Q. 132. As the assistant manager, the chemist in charge of the patent department of your company, have you had occasion to know or to ascertain the commercial value of these various patents which were developed by your company during the period under discussion now, prior to the war?

A. Yes, I had an ample opportunity to get this information. I am often conferring with the heads of the several departments and also, reports are laid

before me, and I got special information about the sales in the United States of the products that we have patented there.

Q. 133. I think you testified this morning that you had charge of applications for patents in the United States?

A. Yes, I have.

Q. 134. I would like for you to say, for what it is worth, what you regard as the fair market value of the patents which relate to dye stuffs and dye processes which you have described, in 1919; patents which were seized belonging to your company and sold to The Chemical Foundation?

MR. KRESEL: Is this question only as to the 65 patents?

MR. ANDERSON: No, it is as to all of the dye process patents.

(Further colloquy off the record.)

MR. KRESEL: I am simply trying to get my own understanding straight here. This witness testified first that there were three Haber patents; then that there were thirteen tanning dye patents. Do I understand that you are now asking him as to the value of all of the other patents?

MR. ANDERSON: Of the patents other than the 58 Haber patents. He has testified to 58 Haber-Bosch patents and to 13 Tanning patents.

MR. KRESEL: And this present question is as to all the other patents?

MR. ANDERSON: As to all the other patents, that is dye stuffs and industry. I covered it that way, because there is no use of going into it in detail.

MR. KRESEL: As long as we understand it. Now, if your Honor please, I object to the question upon the ground that the witness has not testified to anything which can form a sufficient or

proper basis upon which he can give testimony as to the market value of these patents. I have taken note of just what he has said about it. He said that they are both product and process patents. He said that as to 65 of them, the products under those, had been imported into the United States. He said that during the time of the importations, there was an increase in the amount imported. And lastly, he said that he conferred with heads of departments and had reports before him.

I say, your Honor, that that is not a sufficient basis upon which anyone should be permitted to undertake to give testimony as to the value of these patents; and, according to this witness, if there were 450, if you take out 58 and 13, you have almost 400 patents, without the slightest specification of what patents he is referring to, which are valuable and which are more valuable, or which are less valuable. Upon this mere skeleton that he has given, for him to undertake to place a value, it seems to me, would be absolutely worthless to the Court to form any opinion.

MR. ANDERSON: I will just withdraw the question then. I will just take that much longer. I was trying to cut the examination short, but I will go back.

Q. 135. Will you make a list of the patents by issue numbers from the exhibit in the bill, a list of those patents which were in use and under which exportations to the United States were made prior to the war?

A. I can furnish such a list.

Q. 136. How long would it take you to do it now?

A. Half an hour, quarter of an hour, in between.

MR. KRESEL: I trust that Colonel Anderson is not misunderstanding me.

THE COURT: I think he is. Will you state your objection again?

MR. ANDERSON: He said we have not identified the patents. We are attempting to now.

MR. KRESEL: Not at all. That is the reason I asked you to state whether you meant all the other patents. That sufficiently identifies them, in a group.

THE COURT: I think you misunderstood Mr. Kresel entirely.

MR. KRESEL: That sufficiently identifies the group. But my point is that this witness is about to give the value of this large group of patents without undertaking to say now, as to patent 1,000,002, I think it is worth so much; 1,000,003 is not worth as much as that, and for this reason; he has not given any figures at all. He has not even said what their profits were in Germany on these importations under the 65 patents. We have nothing upon which a person can base any opinion.

MR. ANDERSON: You can test that knowledge, if you wish, on cross-examination.

THE COURT: Mr. Kresel's objection is that his appraisement would not be a real appraisement of the value of these patents, because an appraisement must be in detail to be of any value at all.

MR. ANDERSON: If your Honor please, it will appear later in this case that The Chemical Foundation bought these patents for a lump sum of $250,000 and did not appraise any of them. Now they ask us to appraise them.

Q. 137. I will ask you to state, if you can state, what your profits were for the year 1913 from the pat-

ents that you said you exported to the United States under.

MR. KRESEL: That I object to upon the ground that it is immaterial and irrelevant as to what the profits were in 1913. These patents were sold in 1919. Besides, the profits cannot be from a patent. The profits are from manufacturing articles and selling them.

MR. ANDERSON: I think, if your Honor please, that if you manufacture an article and sell it in the United States, and it is covered by a patent process, that the net profits which you derive from the manufacture of that article, is one of the evidences of value in that patent, because you could not manufacture otherwise.

THE COURT: I do not understand that.

MR. ANDERSON: After deducting all the cost of manufacture.

THE COURT: There are so many elements. Is it not the Westinghouse case, Mr. Warfield, which goes into that?

MR. WARFIELD: Yes. If that were an accounting, it would be different, but unfortunately for counsel here, it is very different.

THE COURT: I do not understand, Colonel Anderson, that you can get the profits in that way. I may be mistaken, but that is my opinion.

MR. ANDERSON: I would like for the evidence to go on the record, subject to objection, if your Honor please, and then we will take up the question.

THE COURT: Objection overruled then under our working arrangement.

MR. ANDERSON: I do not want to argue on this question all this afternoon. It may take us a week. You will hear us later.

Q. 138. Go ahead and tell us what your profits were from these particular patents which you exported in 1913, your net profits, after deducting all expenses?

A. To make it clear, I wish to state that this answer simply concerns the United States patents.

Q. 139. Yes.

A. Mr. Kresel just now asked for the value in Germany. I do not think it is of any value. This morning he complains that we are confusing the value in Germany and in the United States, but I think the only issue here is the United States patents' value.

MR. KRESEL: I am glad to see that the witness is now trying the case instead of being just a witness, but I do not think that is called for.

THE COURT: Any objection?

MR. ANDERSON: Not the slightest, it may be stricken out.

THE COURT: Strike it out. Will you read the question?

Q. 140. What we want is what were your profits, if you can state, what they were from manufacture of articles exported in the United States under these particular patents during the year 1913?

A. Those profits?

Q. 141. Yes.

A. They amounted to 1,367,668 marks, gold marks, then.

Q. 142. That was for the year 1913?

A. It was the profits in 1913, from exports into the United States.

MR. ANDERSON: This is all objected to, of course, I understand.

Q. 143. You say the profits in the United States?

A. In the United States.

Q. 144. Did your company manufacture and sell direct to the United States?

A. No, that was a misapprehension, it is profits which our company earned in Germany, from exports into the United States.

Q. 145. That is, net profits, after deducting all expenses of every kind?

A. All expenses and manufacturing costs.

Q. 146. In the particular patents which you have described, that is those other than the synthetic tanning and the nitrogen processes?

A. Yes, the sixty-five patents.

Q. 147. Are there any more than sixty-five patents of that lot, in use at the present time?

A. Yes, there are.

MR. KRESEL: In the United States or in Germany?

MR. ANDERSON: In Germany.

THE WITNESS: No, in the United States.

Q. 148. Well, you can take it the United States. Do you know of your own knowledge in the United States?

A. I think it is better to confine it to the United States. (Laughter.)

Q. 149. All right, but what I want to get at is, if you do not know the thing in the United States, you cannot testify to it. I will prove that from some other source. Now, what I want to get at is the number of those patents in use today, if you know it, do you know in the United States?

A. I know the number of the United States patents which are now being in use in Germany, and the products of which may come over here, or are coming over here.

Q. 150. How many?

MR. KRESEL: That was not the question.

Q. 151. That was the question as far as I could make out, because I told him he could not testify otherwise than in the United States.

MR. KRESEL: I understood the question to be whether he knew how many patents are being used in the United States. If the Colonel wants to re-cast his question, there will be no objection.

Q. 152. No. How many of those patents which were taken out in the United States are now being used for the manufacture of products which might be shipped to the United States from Germany? This witness cannot testify as to what is being done in the United States.

THE COURT: Won't you read that question. Have the question re-read to you, and see whether it expresses your thought.

(Question repeated by the stenographer as recorded.)

MR. KRESEL: Do I understand the question is what United States patents are being used in Germany?

MR. ANDERSON: No. Here is the situation. Certainly not. You cannot use United States patents in Germany, I assume everybody knows that. Here is what I want to get at, Doctor——

MR. KRESEL: I assumed that.

MR. ANDERSON: These patents are taken out first in Germany, and then in the United States?

THE WITNESS: Yes, sir.

Q. 153. Now, you have described all your German patents you have taken out in the United States, a certain number covering dye stuffs and dye processes. You are now engaged in the manufacture of products under those patents in Germany, which could be shipped to the United States?

A. Yes.

Q. 154. How many of those patents are you commercially using at the present time?

A. It is eight additional.

Q. 155. How many in total?

A. It is sixty-five before, it is 211 dye stuff patents and related patents which are now being used.

Q. 156. 65 and 88—you are mistaken?

A. No, it is 153.

Q. 157. 153?

A. Yes.

Q. 158. Your 211 patents included your tanning and nitrogen patents which we are not considering?

A. Nitrogen patents; yes.

Q. 159. Now, I wish to go back to the nitrogen patents for a moment and ask you a question, and I know that it will be objected to, but that does not matter: Assuming that the patents taken out in the United States are substantially the same in terms as the patents taken out in Germany, what would be a fair royalty basis, in your opinion, for the right to use this patent in the United States, in the manufacture of nitrogen products?

MR. KRESEL: Does this refer to the 58 patents?

MR. ANDERSON: The nitrogen patents.

A. The 58 patents.

Q. 160. I mean, what would be a fair royalty basis?

MR. KRESEL: We object to that, if your Honor please, upon the ground that that is immaterial; that the question of what is a fair royalty is not an issue in this case.

MR. ANDERSON: It is one of the elements, and I am going to follow that up with other questions, and I want to lay the basis for another question.

MR. WARFIELD: Based on a legal impossibility.

MR. KRESEL: I assume that counsel is going

to ask additional questions, but that is hardly an answer to the objection.

MR. ANDERSON: I do not desire to argue.

THE COURT: Objection is overruled on the same ground.

A. I think a fair royalty, a very moderate royalty, is about one cent a pound on fixed nitrogen.

Q. 161. A cent a pound on fixed nitrogen?

A. Yes, manufactured under those 58 patents, or part of them.

Q. 162. Yes. Do you refer now to the Haber-Bosch patents?

A. Yes.

Q. 163. Assuming that the patents are the same, in terms substantially as in Germany, and the consumption of nitrogen in the United States in 1919, exclusive of production from coke ovens, was 100,000 tons, and that the average life of these patents were ten years——

MR. KRESEL: Is there a question?

MR. ANDERSON: No——

Q. 163. (continued.) ——what would you then say would be the royalty value of those patents?

MR. KRESEL: That calls, if your Honor please, assuming that it is material and relevant, it calls simply for a mathematical calculation, which, of course, the Court would be still able to make.

MR. ANDERSON: I only want to get the question on the record. I could not make it, so I would like to have it.

MR. KRESEL: I am afraid that this witness is not better qualified to make that calculation than anybody. It is not a subject of expert testimony. We object to it upon that ground.

THE COURT: Objection sustained.

MR. ANDERSON: I do not think there is anything else that I will ask——

Q. 164. Then, I will ask this question: Assuming that the patents are substantially the same, and that the consumption of nitrogen in the United States in 1919, for chemical purposes, exclusive of the production from coke ovens, was 100,000 tons, and the average life of the patent was ten years, what would be the value of the patents?

MR. KRESEL: I object to that on the ground that this witness has already given the value of these patents at seventeen million dollars. It is not the intention of the Government now to change that?

MR. ANDERSON: Not at all. If your Honor please, the evidence was objected to because we have not laid proper foundation. We cannot lay a proper foundation at this stage of this case, by proving these assumed facts, because this witness cannot testify as to the consumption of nitrogen in the United States, except from records. We have to prove that later by the evidence. Now, I would like to have his judgment, as an expert on that subject, based upon these assumptions, of course, if these assumptions are not testified to later and not proved, the evidence goes out.

THE COURT: The difficulty, I understand from Mr. Kresel, in ruling on Mr. Kresel's objections, is this, and if I properly understand the questions which you now ask, were in the assumption that you must make, that they will not furnish proper foundation for the testimony of this witness. If I understand this objection, it is that this man, having no familiarity, and not being in America, and not being familiar with American

markets for these patents, and being only distantly familiar with the sale of a certain amount of material in America, is not qualified as an expert to place values, American values, upon the patents which were sold. Does that indicate your idea?

MR. KRESEL: Yes, your Honor has summarized it excellently. I could not have expressed it as well.

THE COURT: Then, if that is true, then the assumption of fact will not supply the basis, the objection going to the incapacity of the witness to testify with respect to the matters asked on. The objection therefore is overruled on the same basis.

MR. ANDERSON: I do not care to say anything. I was going to reply on that subject, but I will not reply.

Q. 165. Will you answer that question on the basis of that 100,000 tons of nitrogen produced a year, what would be the value of these patents?

A. On the basis of 100,000 tons, it would be about twenty millions of tons—of dollars—twenty millions of dollars, of course.

By MR. KRESEL:

Q. 166. Twenty million tons or dollars?

A. Dollars, well, it is counted in dollars.

By MR. ANDERSON:

Q. 167. Based on one hundred thousand tons, outside of coke production. Now, Dr. Holdermann, you testified that you had charge of procuring these patents in the United States. Can you state what is the cost to your company of securing the patents in the United States?

MR. KRESEL: We object to that upon the ground that that is immaterial and irrelevant.

This really cannot show the value of the patents as to what it cost to get them.

MR. ANDERSON: There is an allegation in the bill in this case, if your Honor please, which is to the effect that the price paid for these patents was less than the actual cost fees of getting them. I do not care to go into an argument as to the relevancy of that, because you cannot develop it until you develop this entire case; but at the present time I would like for this witness to testify to that. If it is not relevant, it can be stricken out at the proper time. I do not want to argue at all.

A. You mean the legal fees that are paid for taking out the patents?

MR. ANDERSON: The legal fees; what he has paid, the attorneys fees, and everything else, what every patent cost you, for the United States. If it is immaterial, it can be stricken out, but unless it is necessary, I do not want to go into a lengthy argument on this question unless I have to.

MR. KRESEL: Does this refer to every one of the five hundred patents?

MR. ANDERSON: Every one of the five hundred patents.

MR. KRESEL: I have taken particular objection. I assume your Honor will dispose of it in the same way as the others.

THE COURT: Objection overruled.

A. The legal fees are $35 for every patent, and foreigners have to employ a patent attorney, and he will charge $50 a patent, and there may be additional costs for appeal and interference cases in more difficult matters.

Q. 168. The minimum charge to your company itself for every patent was $85, then?

A. Yes, legal fees included.

Q. 169. And extra charges they have for special service?

A. Yes, sir.

MR. ANDERSON: That is all.

CROSS-EXAMINATION.

By MR. KRESEL:

XQ. 170. Now, Dr. Holdermann, if you will give me your attention, I would like to ask you a few questions?

A. Yes, sir.

THE COURT: Suspend just for a moment.

(After a short recess.)

XQ. 171. Doctor, did you give us your age this morning?

A. Yes.

XQ. 172. How old are you—I have forgotten.

A. Forty.

XQ. 173. And you did say that you graduated in 1904, I think, was it not?

A. Yes.

(No Q. 174.)

XQ. 175. And then you joined the staff of the Badische Company in 1906?

A. Yes, that is it.

XQ. 176. Now, has your work been of a technical nature or has it been administrative mostly—you understand what I say?

A. Yes, more administrating.

XQ. 177. More administrative?

A. Yes.

XQ. 178. That is, you are by profession a chemist, but since you have been with the Badische Com-

pany you have been one of the executives of the company?

A. Yes.

XQ. 179. What title do you hold with the company; what is your title?

A. First, I was a chemist, and then I became an assistant manager, as a prokurist in Germany.

XQ. 180. A prokurist. Now, what is a prokurist, you say; an assistant manager, what particular power as a prokurist have you?

A. He has the power of signing the company, together with another assistant manager or a director.

XQ. 181. That is, you are authorized in conjunction with another official of the company to sign the company's name to contracts and documents?

A. Yes.

XQ. 182. And you have had that power ever since you became assistant manager?

A. Yes, that is inherent to that——

XQ. 183. To that office?

A. To that office, that is the title.

XQ. 184. And how long have you been assistant manager?

A. Since the fall of 1920.

XQ. 185. The fall of 1920. Now, prior to 1920, did you have any office in the company, or were you just an employee?

A. I was just an employee in the patent department.

XQ. 186. In what department?

A. In the patent department.

XQ. 187. Well, have you been in the patent department ever since 1906?

A. Yes, with a few exceptions in the war, where I had occupation in the ammonia laboratory, practically.

XQ. 188. When was that, during the war, did you say?

A. During the war I did experimental work.

XQ. 189. You did not serve in the army?

A. No.

XQ. 190. Were you under military rule at all while you were doing this experimental work?

A. Of a sort, yes.

XQ. 191. A sort of military rule?

A. Yes.

XQ. 192. Indeed, many men while not actually with the armies in the field, were working for the Fatherland in ways which you were working?

A. Yes, that is it.

XQ. 193. And as a result of that service, did you get any rank?

A. No.

XQ. 194. Any army rank?

A. No.

XQ. 195. None at all?

A. No.

XQ. 196. Now, how long a time did you do this military or war work, during the entire period of the war?

A. Yes.

XQ. 197. What experiments that you were carrying out, were they carried out in the factories of the Badische Company?

A. Yes.

XQ. 198. In—what is the name—Ludwigshafen?

A. Ludwigshafen and Oppau, which is near Ludwigshafen.

XQ. 199. Ludwigshafen and Oppau are only two of the factories of your company; there is another one at Mersenberg, is not there?

A. There is a third one.

XQ. 200. Yes?

A. Mersenberg.

XQ. 201. Are those the only three?

A. Yes.

XQ. 202. Now, the Oppau factory was built prior to the war, or during the war?

A. No, it was built prior to the war.

XQ. 203. How long?

A. It was started about 1911 or 1912.

XQ. 204. 1911?

A. Or 1912; I am not sure about.

XQ. 205. Well, during the war, was it enlarged?

A. It was enlarged.

XQ. 206. Considerably enlarged?

A. Yes.

XQ. 207. For the purpose of doing war work?

A. Yes.

XQ. 208. And this Mersenberg plant, was that built during the war?

A. Yes, it was started in 1916—in the fall of 1916.

XQ. 209. And was it completed before the war ended?

A. Yes, in a very short time.

XQ. 210. And that likewise was devoted to war work?

A. War and fertilizers for the agriculture.

XQ. 211. Well then, that was war work to an extent, was it not?

A. Yes, in a broad sense.

XQ. 212. It was all done under supervision?

A. Yes.

XQ. 213. To help along the armies in the field?

A. Yes.

XQ. 214. Now, I do not mean to pry into your private affairs, any more than is absolutely necessary, but I would like to know what arrangement for compensation you have, as a procurateur of the Badische Company?

A. I get a monthly salary, and an additional sum at the end of the year, but it does not depend on any production or so; it is simply at the discretion of the managing directorate.

XQ. 215. Yes. That is, you get a stipulated sum, and in addition to that, you get a bonus, so to speak?

A. Yes.

XQ. 216. Now, the first time that you came here was in 1922?

A. Yes.

XQ. 217. That was your first trip to the United States?

A. Yes.

XQ. 218. And what month in 1922, did you come here?

A. It was June of 1922.

XQ. 219. And have you been here ever since?

A. No. I left after a few weeks.

XQ. 220. You stayed here a few weeks and went back to Germany?

A. Yes.

XQ. 221. And when did you return?

A. In the middle of April, this year.

XQ. 222. And you have been here since then?

A. Since that date.

XQ. 223. And you are about to depart again for Germany?

A. Yes.

XQ. 224. Now, when you came here in June, 1922, did you come here on the business of your company, the Badische Company?

A. Yes.

XQ. 225. Were there others that came with you?

A. Yes.

XQ. 226. Was there a Dr. Oppenheim that came with you?

A. Yes, but he was not a member of our firm.

XQ. 227. I am coming to that. And who else came with you?

A. A lawyer called Wagner.

XQ. 228. And who else?

A. What?

XQ. 229. Did you say there was somebody else?

A. I said Mr. Oppenheim.

XQ. 230. That is, there were three of you?

MR. ANDERSON: I do not want to object to this witness because we want the facts to come out, whatever they are; but I cannot see the relevancy of all of this inquiry.

MR. KRESEL: I am perfectly willing to state for the record, and for the information of counsel, that we deem this to be relevant. We desire to show the interest of this witness. We desire to show his connection with this litigation. It is our understanding of the rule that a person who undertakes to qualify as an expert, must be without interest in the outcome of the litigation. We propose to show that this witness has an interest, and that these questions are directed toward developing that fact.

MR. ANDERSON: But the question of who should have come over here with him, if you want to investigate his attitude—but we are not engaged in the general trial of the question of who is interested in this litigation. The Government of the United States is the only party now, and this gentleman is an officer of the Badische Company, and it is stated here that the Badische Company claims those patents, or was the owner; to those facts I have no objection in the world, and if they can show that he had any personal interest, I have no objection, but this inquiry generally into who came over here, to the United

States, certainly cannot have anything to do with this litigation.

THE COURT: I did not see the relevancy myself at the time, Mr. Kresel. Do you care to state that definitely?

MR. KRESEL: Yes, your Honor. I have the information that I have solicited. I was going on to another point.

MR. ANDERSON: I make a motion to strike out all the evidence as to who came over here, excepting the witness himself.

MR. KRESEL: No. I am perfectly willing to state the connection between the witness and the other two men. Our information is that they were a committee who were designated — they were a committee who were designated by those German dye interests to come here and seek to obtain possession of these patents, that they are——

THE WITNESS: That is wrong.

MR. KRESEL: Mr. Witness, if you will just deal with this, I think we will get along very well. Do not address the Court without direction. Of course, I have made the disclosure now. I do not know how the witness is going to handle the proposition, but I have no objection to the statement. I think your Honor will see that that is relevant——

THE COURT: The objection will be overruled on the same basis as before.

XQ. 231. Now you and these other two men represented not only the Badische Company, but some other chemical companies in Germany, did not they?

MR. ANDERSON: I object on the ground that anybody that this witness represented—I have no objection in the world to getting the interests of this witness in this instance, but I do object to his asking whether they represent any other company.

THE COURT: I am wondering this, Colonel Anderson, and I am stating this so that you can have an opportunity of helping me, that whether the interest of this man may not be two-fold; whether he might not have a personal interest in the Badische Company, and he might not be one of a number of delegates representing, for instance, the dye interests of Germany. Now then, if I correctly understand Mr. Kresel, this witness has already disclosed, even in his direct testimony, his direct interest in the Badische Company; but as I understand Mr. Kresel further, there has not been as yet a full disclosure what interest that was delegated to him by the German interests; is that so?

MR. KRESEL: That is correct. That is entirely so.

MR. ANDERSON: You mean a year ago. He is here now in that capacity.

THE COURT: No. That is what I presume. I am not ruling on anything you understand, but I presume that the questions which are being asked by Mr. Kresel are to be followed up, and as a means of getting at the full interest of this man in this litigation at any time. Am I correct, Mr. Kresel?

MR. KRESEL: Yes, your Honor.

MR. ANDERSON: I will just note an objection.

THE COURT: I will make merely a formal ruling instead of an absolute ruling. The objection is overruled on the same basis as understood at the beginning of this testimony.

XQ. 232. Doctor, you heard Colonel Anderson state just now that you were here now in your capacity as representing the Badische Company, whose interests in these patents you represent?

A. Yes.

XQ. 233. You know, don't you, that your company has brought a suit based upon these very patents, and that that suit is pending in this Court, and that in that suit, your company is the plaintiff, and The Chemical Foundation is the defendant?

A. Yes. It does not have relation whatever to the Government suit. It is quite another thing.

XQ. 234. Now, you see you have not answered my question; you are not working with me. I am asking you whether——

A. I answered yes.

XQ. 235. Well now, if you will just say yes and stop, we will get along. Now, which one of these three men was the lawyer, Oppenheim?

A. Oppenheim was a lawyer and Wagner was a lawyer.

XQ. 236. Which company did Wagner belong to?

A. The Badische Company.

XQ. 237. And which did Oppenheim belong to?

A. The Achefa a/c Aniline Fabriken, Berlin.

XQ. 238. And whatever your purpose was, and I am coming to that in a minute, three of you came here for the same purpose, did not you?

A. Yes.

XQ. 239. All right. Now, when you came here, you were in New York, were you not?

A. Yes, I was in New York.

XQ. 240. And did you have a meeting with any lawyers?

A. Yes, I did.

XQ. 241. Yes, and will you state the name of the lawyers?

A. I do not see any objection. It was in all the newspapers. It was the firm of Gordon, Battle & Vandiver.

MR. ANDERSON: I would like to ask again what possible bearing this may have between this

suit, and the Government of the United States and The Chemical Foundation. It is not a matter concerning this suit in the slightest whether this gentleman employed lawyers or did anything else to conduct suits for the Badische Company. If it is a question of disclosing an interest, that interest is disclosed, and I did not say what Mr. Kresel says—I say I do not think I did—but in any event there has not been any question as to this gentleman being was an officer of the Badische Company. Now he was put on the stand purely to testify on the question of value. If these gentlemen want to make him their own witness, they can do it at their own risk, but it is purely immaterial to any possible interest in this case.

Mr. Kresel: What I am trying to develop, your Honor, has a direct bearing and direct connection between the mission of these gentlemen and the other two mentioned when they came here last year to the United States, and the present suit which your Honor has before you.

The Court: Have you finished?

Mr. Kresel: Yes, your Honor.

Mr. Anderson: There is no such connection. It is the first I ever heard of this man coming to the United States last year, and I drew this bill. There is no connection, but suppose he did, the sole question here is whether this is a valid transfer of these patents or not. It does not make any difference who brought the suit. The Government of the United States brought the suit under the direction of the President of the United States. The bill shows that.

The Court: Does not that jump one point with respect to this man's interest?

Now, unless the cross-examination now being developed is intended to show the full measure of

the witness's interest in this litigation, I do not see its relevancy myself. Now then, if, however, this cross-examination is tending to link this witness's interest in this case up, we will say, to his interest in some other case, then, would it not have a material bearing upon the weight to be given this witness's testimony, even though the connection between this suit and other suits is wholly unknown to you, because we are not developing here, as I understand the trend of the cross-examination, whether this suit was properly or improperly brought; but if I understand it, Mr. Kresel is trying to develop the full measure of this witness's interests, and the steps that he has taken looking to this interest, in order that his testimony in this suit may be properly weighed. I may be wholly wrong.

MR. KRESEL: No, your Honor is entirely right and I thought I had made it plain when I answered the Colonel's last objection.

MR. ANDERSON: I would say that even developing that, could have, in my humble judgment, to overcome the objection, nothing to do with the situation. His interest in the subject matter of this suit would have a bearing. In any event, I do not want to argue the question. I will merely make the objection and submit it.

THE COURT: The same formal ruling then, Colonel.

MR. ANDERSON: Yes; I understand all the rulings are formal.

By MR. KRESEL:

XQ. 242. Doctor, I ask you whether you were not aware of the bringing of a suit by your company against The Chemical Foundation Company, and also the DuPont Company, and the United States Treas-

urer, which is based upon the very patents as to which you testified today?

A. We have not brought any suit against The Chemical Foundation.

XQ. 243. Did you bring a suit against the Du-Pont Company and Frank White as Treasurer of the United States, in this Court right here?

A. Yes, we did.

XQ. 244. And you signed the complaint in that suit, didn't you?

A. Yes.

XQ. 245. And in that suit, you on behalf of your company are asserting rights to these very patents about which you testified today, are you not?

A. These suits are concerning license fees under these patents.

XQ. 246. Under these very patents?

A. Under these very patents.

XQ. 247. And down in New York, you on behalf of your company brought another suit against The National Aniline & Chemical Company and Frank White as Treasurer of the United States in which suit also you are asserting rights under these very patents about which you testified today; is that not so?

A. Yes, we brought a number of such suits to recover license fees under our patents.

By The Court:

Q. 248. Can you answer the question yes or no?

A. Yes.

By Mr. Kresel:

XQ. 249. Of these very patents?

A. Yes.

XQ. 250. And in those suits you claimed to be the owner of these very patents, didn't you?

A. Yes.

XQ. 251. I mean, your company?

A. Yes.

XQ. 252. And as you sit there, you claim now, do you not, that your company is the owner of these very patents, do you not?

A. Yes.

XQ. 253. And there is no doubt about it, and I do not mean to criticise you at all, that you are doing everything that you can legitimately do to get those patents back for your company, are you not?

A. Yes.

XQ. 254. Now to return to our visit to New York. You stated that you and Mr. Oppenheimer and Mr. Wagner——

A. Mr. Oppenheim, please.

XQ. 254. (continued) that you and Mr. Oppenheim and Mr. Wagner had an interview in the office of O'Gorman, Battle & Vardiver, is that right?

A. Yes.

XQ. 255. At that meeting—I am not asking you to tell me what was said—was the question concerning these very patents discussed?

A. Yes.

XQ. 256. And after that meeting, didn't you and your two associates go to Washington and have an interview with someone in the Department of Justice?

A. No, I was not there.

XQ. 257. You were not there personally?

A. No.

MR. ANDERSON: I object to that, if your Honor please. If he was not there, he cannot testify to what took place.

MR. KRESEL: Just let me finish the question.

THE COURT: And do not answer until Colonel Anderson has an opportunity to make his objection.

XQ. 258. Don't you know that your associates, Mr. Oppenheim and Mr. Wagner did, subsequent to

that meeting in Mr. Vandiver's office, go to the Department of Justice in Washington and there had an interview with someone; don't you know that?

A. I don't know how it concerns the value of the patents here.

THE COURT: Colonel, shall you or shall I explain to this witness what his function is while on the stand?

MR. ANDERSON: I think your Honor should do it.

THE COURT: I think it will come with better grace from you.

MR. ANDERSON: I state to Dr. Holdermann that his sole province is to answer the question that is asked by counsel. If you can answer yes or no, answer yes or no. If you cannot answer yes or no, then make as short an answer as you can, that is fair and accurate, to the question. If the question is in any way illegal, I might say that is my duty.

THE COURT: Outside of a pure question of personal privilege which he is not likely to be led into.

MR. ANDERSON: Of course, your Honor will understand that the witness is entirely unfamiliar with the procedure of the Courts in the United States and I tried to explain that to him last night.

THE COURT: Upon that assumption, I asked you to say that to him rather than myself, because he might take that from me as a criticism.

MR. ANDERSON: I explained to him last night our procedure, but of course it is very difficult for him.

I want to note an objection as to what took place in Washington, all questions subsequent to

the statement where he said he did not go to Washington.

THE COURT: I think there is no answer to that question. Will you repeat the question?

THE WITNESS: Just a moment. Unless Colonel Anderson objects, I have to answer?

THE COURT: You have to answer.

XQ. 259. Now Doctor, don't you know that after that interview in New York in Mr. Vandiver's office, your associates, Mr. Oppenheim and Mr. Wagner, did go to Washington and had an interview with a representative of the Department of Justice?

A. At least one of them.

MR. ANDERSON: One moment. The witness has already testified that he did not go to Washington and did not know. Therefore he cannot know, except from hearsay, what took place and I therefore move to strike it out, or rather I object to the question and any answer thereto.

MR. KRESEL: Upon cross-examination, your Honor, I am entitled, if I want, to even this man's hearsay. As Colonel Anderson has pointed out, that may not bind him, the hearsay may not, and yet it may be very important to us in our case.

MR. ANDERSON: In the first place, I wish to reply to Mr. Kresel that this is not cross-examination. There was nothing in the world that related to it in the original examination. It is a pure inquiry of his own, and therefore not cross-examination in the true sense of the word.

MR. KRESEL: It seems to me, your Honor, that the Government ought not to try to stop us to develop fully this man's interest in the litigation.

MR. ANDERSON: If your Honor please, we have no objection. I want to state now, and I am going to state again when the trial is resumed, the

Government wants all the facts in connection with this matter brought out. But they want it brought out by witnesses who know something about it and not mere hearsay.

THE COURT: You may renew the motion at a subsequent period, if you want. Your motion was to strike out?

MR. ANDERSON: Yes, sir.

THE COURT: It is denied, the same as the objections are overruled.

MR. ANDERSON: Yes, subject to raising it again.

XQ. 260. You knew before this one of the three of this commission went to Washington, that he was going to Washington; you agreed with him on that, did you not?

A. I knew, but I did not agree. He did not ask me for my agreement.

XQ. 261. You knew he was going?

A. Yes.

XQ. 262. And you knew that he was going to the Department of Justice with reference to these very patents as to which you testified today?

A. No, I did not know.

XQ. 263. Well, he went there with reference to patents, did he not?

A. I do not know.

MR. ANDERSON: To each of these questions I would like to note an objection, if the Court please.

XQ. 264. You three gentlemen, you have already told us, came here in connection with the patents that were seized by the Alien Property Custodian, did you not?

A. Yes, chiefly for that.

XQ. 265. And do you say now, Doctor, that you really do not know that this one of the three gentlemen

had an interview with the Department of Justice about the patents that were sold by the Alien Property Custodian?

A. No, I do not know. They may have discussed other things. They may have discussed the German claims in general.

XQ. 266. Well, they may have, of course. I do not want to speculate with you. But your main purpose in coming here was with reference to these patents that were seized by the Alien Property Custodian, was it not?

A. Yes, that was.

XQ. 267. And was it not shortly after the visit of this one of your commission to the Department of Justice that this suit which we are now trying was instituted?

MR. ANDERSON: If your Honor please, he cannot testify that he knew about anything when he was not in Washington himself. The question of when this suit was instituted is a matter of record in this suit.

MR. KRESEL: I am not asking for the exact date. Your Honor sees the relation between the questions.

MR. ANDERSON: We want to have a showdown right now. If these gentlemen want to impugn the motives of the Government in this case, let them say so.

THE COURT: I think you are acting entirely on inference.

MR. KRESEL: Will your Honor permit me to answer the question, because I think it calls for an answer from me?

THE COURT: I should be very glad to have you do so.

MR. KRESEL: We do not impugn the motives of the Government. We impugn the motives of the

people whom this gentleman represents. We want to show what his interest in this litigation is. We make no reflection upon you gentlemen who represent the Government or the Department of Justice in this matter. I think that answers the question.

THE COURT: That was my understanding of Mr. Kresel's attitude.

MR. ANDERSON: Of course, with that statement, I wish to object to anything in connection with what took place in Washington on the ground that this witness was not there, as he testified he did not go there and knew nothing about it.

THE COURT: Colonel, I was wondering this, if you will be good enough to help me one step further—you have been very patient with me—as to whether this witness' knowledge of steps which were taken with respect to these matters, whatever that step may have been, that is, as to whether when his colleague went to Washington, this man did not know that he went to Washington for a definite purpose or any specific purpose with respect to the patents in suit—all of the steps which have been taken actively by the witness or are with his knowledge and consent taken by other persons, seem to me of moment. Whatever my ultimate view may be, it seems to me at the moment to have some bearing on the interest of the witness and bears, on cross-examination, on the weight which should be given to his testimony.

MR. ANDERSON: While I understand at this time the question which your Honor has suggested, I differ from your Honor's view. However, I do not want to argue it, because I merely want to reserve the point, and at a later time this whole question will come up.

THE COURT: I am indulging in what will be

too long a discussion until we get to understand where we each are; and after a while we will begin to make formal rulings. But until we find out where we are severally, I thought possibly there was some advantage in discussing the matter, even if it takes some more time.

MR. ANDERSON: I wish to say, if your Honor please, I do not want to object to any question that does not seem to me to require objection.

MR. KRESEL: I will be through on this line in a very few questions.

THE COURT: The same formal ruling.

XQ. 268. Will you answer, please?

A. I am a witness from what results from the newspapers and from the records. I am not a witness to that.

By THE COURT:

Q. 269. If you know, you must answer. If you do not know, say so.

A. I don't remember exactly when the suit was brought. Can you tell me the date when the suit was brought?

By MR. KRESEL:

XQ. 270. Yes, I will be glad to tell you. Listen, Doctor. This bill, this suit, was filed on the 8th of September, 1922. You know, of course, that before the suit was brought, the President wrote a letter with reference to this matter to the Alien Property Custodian. You know that, do you not?

A. Yes, I know that.

XQ. 271. Was not that letter from the President to the Alien Property Custodian written after your confrere had an interview with the Department of Justice? You know that?

A. It was after or before. It was about that date.

XQ. 272. Well, I will take your answer. Now, the Badische Aniline & Soda Fabrik—that is the full name of your company, is it not?

A. Yes.

XQ. 273. And it manufactures dyes, intermediates, pharmaceuticals?

A. No pharmaceuticals.

XQ. 274. No pharmaceuticals?

A. No pharmaceuticals.

XQ. 275. What else does it do besides manufacturing dyes and intermediates for dyes?

A. Acids, sulphuric acid, chrome alum and ammonia; nitrates; fertilizers.

XQ. 276. And it does a very large business, does it not?

A. Yes.

XQ. 277. Its capital is how many million marks?

A. It is now 880,000,000.

XQ. 278. 880,000,000 gold marks?

A. No; paper marks.

XQ. 279. That is unfortunate. In 1919, what was its capitalization?

A. I cannot tell that from memory. It may have been 90,000,000 of marks.

XQ. 280. Was it not 430,000,000?

A. I think that was after 1919, when it was increased.

XQ. 281. To 430,000,000?

A. No, I am quite sure about it. This was two years ago when it was 430.

XQ. 282. Two years ago?

A. Two years ago, yes.

XQ. 283. 1921, then?

A. 1921, yes; about so.

XQ. 284. And it employs a great many employees, does it not?

A. Yes.

XQ. 285. Just to give the Court an idea of the extent of your works, it employs some 30,000 laborers, does it not?

A. Yes.

XQ. 286. About how many chemists does it employ?

A. About 300 graduate chemists.

XQ. 287. And how many engineers are there employed?

A. About 200.

XQ. 288. And then in addition there is the administrative force; that is about 2,500?

A. About so, yes.

XQ. 289. And your concern has been in business since 1865, has it not?

A. Yes.

XQ. 290. Yours is not the only large chemical concern in Germany, is it?

A. No.

XQ. 291. What is the next largest to yours?

A. Farbenfabriken, vorm. Friedr. Bayer & Company and Farbwerke vorm. Meister Lucius & Bruning in Hoechst am Main.

XQ. 292. In order that we may not get involved in long German names, we will call one the "Bayer Company" and the other the "Hoechst Company"?

A. Yes.

Mr. Anderson: I do not like to object, your Honor. I do not think it has any possible bearing upon this suit. But I do object because it certainly has no bearing upon the original examination, and on the further ground that it is utterly immaterial as to how many companies there are in Germany and what their business is. If we were going into an investigation of the entire dye stuffs and chemical industry of Germany, then this might be relevant evidence. Otherwise it cer-

tainly is not, and there is nothing in the pleadings in this case to call for any such examination as this, that I know of. That is why I object.

MR. KRESEL: As far as this question being in the pleadings is concerned, Colonel Anderson could not have overlooked our defense wherein we plead just that, namely, the hold which the German chemical industry had upon the United States market. But further than that, the basis upon which I am introducing this evidence directly bears upon the witness' direct testimony, namely, as to the value of these patents, the value of these patents, as he testified this morning, to his own company. Now, that value can be judged only in the light of the situation in Germany, the chemical situation in Germany, what it was, how many were in the field, what they controlled. Your Honor can well see that the value of a patent to a well organized, tremendously rich organization is one thing, and the value of a patent in the United States, where there is no chemical industry to speak of, is an entirely different thing; and I want to develop the situation in Germany as to which this witness has testified on his direct.

THE COURT: Objection overruled, under our working arrangement.

XQ. 293. Now, then, the Bayer Company and the Hoechst Company, without going into much detail, are about as large concerns as your company, are they not, and are engaged in the same line of business?

A. Yes.

XQ. 294. Those three companies were in a cartel, were they not, prior to 1904?

A. No, that is wrong.

XQ. 295. When did they go into a cartel?

A. During the war, about 1916.

XQ. 296. The capital of each of these other two,

namely, the Bayer and the Hoechst, was about equal to that of the Badische Company?

A. Yes.

MR. ANDERSON: I do not want to interrupt counsel. Therefore I would like to note on the record that this entire examination is subject to the objection which I have already made, if I may do so without interrupting to object to each question.

MR. KRESEL: That is all right.

MR. ANDERSON: And the same ruling and exception in each case; and also, I want to give notice on the record that counsel takes the witness as his own witness on this examination.

MR. KRESEL: As to that, of course, the Court will rule at the proper time.

MR. ANDERSON: Yes, but I have to give proper notice.

MR. KRESEL: That is all right. The notice is duly received. Perhaps that is for the Court to say.

THE COURT: The suggestion of Colonel Anderson is satisfactory to counsel?

MR. KRESEL: Yes, your Honor, so far as not interrupting the questions.

XQ. 297. Prior to 1916 there was a cartel in which there were the Badische Company, the Bayer, and a concern called the Berlin, were there not?

A. Yes.

XQ. 298. The full name of the Berlin concern was what? What was the full name of that?

A. I am not concerned with that business. I only know it from hearsay. I think it was Interessen Gemeinschaft.

XQ. 299. You are now giving me the name of the cartel. I am trying to get you to give me the name of

the Berlin concern. Was not the name of it the Actien Gesellschaft fur Anilin Fabrikation?

A. Of Berlin.

XQ. 300. The name of the cartel was the Interessen Gemeinschaft?

A. Yes.

XQ. 301. Translated into Good United States, that means what?

A. Community of interests.

XQ. 302. Community of interests is perfect English. Now, that cartel lasted, you say, until 1916, is that right?

A. Yes, sir.

XQ. 303. Side by side of that, there was another cartel, was there not, in which there were the Hoechst, Griesheim, Cacella and Kalle?

A. I don't think you are right.

XQ. 304. We will omit Griesheim?

A. I don't know whether it is correctly designated as a cartel. As I told you, I am not a witness for that. I am not such an organizer for the firms.

XQ. 305. I know, but Doctor you know I am asking you about things right in your home surroundings. You could not have been connected with the Badische Company for so many years without knowing that there was a cartel. You have already told us that.

A. Yes.

XQ. 306. But don't you know about the other cartel?

A. From hearsay; nothing else.

XQ. 307. Well, of course, that is your best knowledge, your best information?

A. This morning you rejected this hearsay as knowledge.

XQ. 308. In 1916 those two cartels came together and formed the present Interessen Gemeinschaft, did they not?

A. Without admitting that there were two cartels. I do not know whether it is a correct expression.

XQ. 309. Well, if that is not correct, this is correct certainly that the cartel of which the Badische was a member took in the others; that is right, is it not?

A. No, that is not right. They did not take in the others. They all combined on the same line.

XQ. 310. All right, they all combined. I will take that. So that today there is a combination of the following chemical concerns in Germany, namely——

A. Firms.

XQ. 311. Namely, the Badische Company, Bayer & Company, The Berlin, Hoechst, Casella, Weiler-ter-Meer, Kalle & Company, and the Chemische Fabrik Griesheim?

A. Yes.

MR. ANDERSON: In addition to my objection already made, I wish to object to that evidence on the ground that if there is any such existing organization, the written agreement between the companies is the best evidence and must be produced. I know nothing about it, and therefore I cannot examine him.

THE COURT: I think this is proper on cross-examination.

MR. ANDERSON: We contend this is not cross-examination. We contend he has made this man his own witness. I do not want to argue, but just to make the point.

THE COURT: Objection overruled.

XQ. 312. And that has been the situation since 1916?

A. Yes.

XQ. 313. One more question on that, Doctor. In 1920, was there not a resolution passed at a general

meeting of all the firms in this cartel, whereby the life of the arrangement was extended until 1999?

A. I do not know.

MR. ANDERSON: I call for the production of the resolution. I object, your Honor.

MR. KRESEL: The answer is already in and the witness says that he does not know. May I go on to the next question then?

THE COURT: I shall assume, Mr. Kresel, that the answer was interposed rather quickly and before Mr. Anderson had an opportunity to make his objection.

MR. KRESEL: Then let us strike it out.

THE COURT: I assume that his objection stands as a motion to strike out. Have you anything to say?

MR. KRESEL: I will consent, your Honor, that the answer be stricken out.

MR. ANDERSON: The whole thing should go out.

THE COURT: You withdraw the question?

MR. KRESEL: I withdraw the question.

XQ. 314. For how long a time, as far as you know, is this combination which you have described, to last?

MR. ANDERSON: I object on the ground that the resolution, if any exists, or the written document, is the best evidence; and it is not cross-examination.

MR. KRESEL: I think if this witness knows, he is competent to testify to it.

THE COURT: Let me see whether there is still a divergence between the views of counsel. Is it your position, Mr. Kresel, that you have made this witness your witness or that you have him under cross-examination?

MR. KRESEL: I consider, your Honor, that I

have so far proceeded in a strictly proper cross-examination.

THE COURT: I wanted your view. The objection, then, is overruled.

A. I am not an expert for the organization of our firms, as I told you. I cannot answer it properly. I am not an expert for that.

XQ. 315. Well, answer it the best way you can.

A. I am not sure. I cannot answer what I am not sure of.

XQ. 316. It is not, Doctor, that you do not want to give us the information, is it?

A. No, I am not sure about it.

XQ. 317. Will you not tell us; this is a combination of the largest chemical concerns in Germany, is it not?

A. A combination or an understanding or how you will call it.

XQ. 318. Well, we will call it an understanding. I will use your language.

A. You will call it so, but I don't know whether it is correct. I will not stick to the word.

XQ. 319. What is that?

A. You will call it a combination. I don't know whether it is correct. It is an understanding.

XQ. 320. Well, I am using your language, Doctor. You called it a combination. Do you want to change that?

A. No; community of interests.

XQ. 321. Subsequently you said it was a combination. Do you want to change that?

A. I don't want to stick to the word. I am not so very familiar with the language, as I told you.

XQ. 322. Very well. We will take your present language, then, an "understanding." Is that what you call it?

A. Yes.

XQ. 323. Now we will stick to that, won't we?

A. Yes.

XQ. 324. Now, how long, as far as you know, is that understanding to last?

MR. ANDERSON: Same objection, and I understand that an exception is noted in each case.

THE COURT: The objections are reserved and no exception is needed, but in order to preserve all rights, we will assume that an exception is entered on each ruling.

A. As I told you, I have no ground for abstaining from an answer. I am not sure about it. It is all published in the newspapers, so I can't tell.

XQ. 325. It is published, you say?

A. It is published. It must be somewhere, and I do not know anything what is not published about this matter.

XQ. 326. Now, Doctor, I have here a book which is entitled "Handbuch der Deutschen Atkien Gesellschaft." You know that publication?

A. Yes, I know it.

XQ. 327. It is a reliable publication, is it not?

A. I do not know whether any word of it is reliable, but generally it is a good book. I am not responsible for the contents.

XQ. 328. What is that?

A. I am not responsible for the contents of it.

XQ. 329. Of course not. You did not write it. But it is a book that you use for general reference in Germany?

A. Yes, for superficial reference.

XQ. 330. Now, do you not know, and I direct your attention to the page in this book which refers to the Badische Company, beginning at page 1806——

MR. KRESEL: May I approach the witness?

THE COURT: Is there objection to it?

MR. ANDERSON: Certainly.

THE COURT: Before doing that, let us see if that is not a step beyond cross-examination, assuming that all other questions have been in cross-examination. If your cross-examination has been for the purpose of laying a ground for showing the interest of this man in this suit, then does the length, the precise length of this community of interest to which you now refer, if unknown to this man, form any groundwork or basis by which you may further interrogate him with respect to his interest or which would show his interest in any event? If he finds out now, after his examination is given, "Here is a more inuring interest than I realized," it would not affect his testimony.

MR. KRESEL: I am not questioning him on this line as to his interest. I have passed that. These questions are directed to the question of value. I am trying to develop that in Germany there was a combination, a trust, of all of the large chemical concerns; and your Honor can see that the value of patents to such a combination is entirely different from that of the value of the same patents to the American consumer or the American public.

THE COURT: Then I wonder, Mr. Kresel, if this would not be as far as you would need to go, assuming that your questions are otherwise proper, as to whether the duration of that joint venture is long or short. Whether it terminates in 1999 or 1989 would be immaterial for the purposes of this suit.

MR. KRESEL: All right, your Honor. I think your Honor is quite correct. Let me put another question to the Doctor.

XQ. 331. Doctor, that community of interest or agreement still exists, does it not?

A. Still exists; yes.

XQ. 332. And existed in 1919?

A. Yes.

MR. KRESEL: I will abandon any further attempt to get the correct time.

XQ. 333. Now, Doctor, under this arrangement, all of these companies pooled their profits, did they not?

A. I am not an expert for this, I told you.

XQ. 334. I am not asking you as an expert. I am asking you as to what you know about it and I want you, Doctor, to give us the information. Now, you know. You are an officer of this company, and you know, don't you, that all of these concerns in the arrangement or the community of interest pool their profits, and that then they are divided according to agreed percentages?

MR. ANDERSON: One moment, if your Honor please. I want to object. I cannot conceive on what possible theory, with all deference to counsel, the question of whether the Badische Company has pooled its profits with some other company can have anything to do with the patents owned by the Badische Company or with the interest of this witness as an officer of the Badische Company in the patents of the Badische Company.

THE COURT: As I understand, Mr. Kresel has passed the interest stage of this witness and he has gone to the basis on which he gave his testimony with respect to values. I do not see myself, Mr. Kresel, how that will help me in determining as to whether he laid a proper foundation for this evidence with respect to values or not.

MR. KRESEL: Your Honor will recall the witness undertook to give testimony as to profits, as to profits which his company realized on 65 certain

patents, and as to profits, I think, with reference to some of the tanning patents.

It seems to me that this is directly in line with that direct testimony. I want to show that the profits that he speaks of are profits which do not accrue directly to his company, but that they are pooled with the profits of other companies, and that then the profits are distributed among all of the companies, according to agreed percentage. It seems to me that is proper cross-examination.

THE COURT: Tending to what ultimate result, Mr. Kresel? I miss it, I am frank to say. I miss the relevancy. It may be very patent, but I do not see it.

MR. KRESEL: Tending to this, your Honor; that if the profits which the Badische Company makes on exports of products manufactured under these patents do not belong to it directly, but may be used for the purposes of making up losses of some other concerns in the combine, it cannot be made the proper basis for determining the value of the patents to this one company. It may be a proper basis for determining the value of the patents to the combination and that is the reason I want to develop the combination.

Of course, as we shall contend in this case, the value of these patents to the German combination was very large. It does not follow that they were at all large to an American who starts in from the groundwork to work up his factory. I want to show the power of this combination. I want to show what it can do with patents; I want to show what it did with the patents. I think that is well in line with the direct examination.

MR. ANDERSON: If your Honor will permit me, Mr. Kresel in his last sentence has stated a reason for his examination. I do not mean to

say he has not been frank before. But their theory, as set up in the answer in this case, which we moved to strike out, is that because the German interests used these patents for the purpose of producing large profits to Germany, that, therefore, the transaction and sale was justified. That is a very crude statement of the position, but that is in substance it.

We moved to strike that out because it is utterly immaterial and we regard it as utterly immaterial to this examination. If the Badische Company made a profit, it may have given all the profits to some other company. It was not a matter of any concern as affecting the value of these patents, what it did with these profits. That is not the question. It is a question of what you can realize on the patents. Therefore, it seems to me that this is entirely aside from the line of original examination. Unfortunately, before we argue that proposition before your Honor, we are taking evidence. It is very embarrassing. I really do not know that we are not losing more than we gain.

MR. KRESEL: But Colonel, don't you see that the fact that a combination of interests can make a certain profit does not indicate that a concern standing alone would make that profit?

THE COURT: But does not your question go beyond that? I can follow you, without passing on it. I can see your point of view up to that point; but my difficulty is that your question is directed to something beyond that. You have shown your community of interest which goes as a basis for the valuation or the interest of this witness.

MR. KRESEL: I think as to that it applies to both. But certainly it applies as to the value.

THE COURT: Will you read me the last question, Mr. Stenographer?

(Question repeated.)

THE COURT: They pooled their interests. You have it there. Now, then, whether they are divided according to agreed percentages, for purposes of this cross-examination, seems to be immaterial.

MR. KRESEL: Let me take your Honor's suggestion. I will strike out of my question the latter portion of it which speaks of dividing the profits according to agreed percentages.

Now, then, may I have the question read?

(Question repeated as follows): "XQ. 334. I am not asking you as an expert. I am asking you as to what you know about it, and I want you, Doctor, to give us the information. Now, you know. You are an officer of this company, and you know, don't you, that all of these concerns in the arrangement or the community of interest pool their profits?"

MR. ANDERSON: May I just say, in addition to what I have already said, that it cannot apply to interest, because that is the point we have been following, and he says he is still following, for the reason that these profits are owned by the Badische Company and therefore the interest of the witness is the primary interest of the owner; and the fact that somebody else may be in a pooling interest with the Badische Company, however indirect an interest in the earnings, does not increase his interest in the Badische Company in any way.

THE COURT: I understand your point, but as I understand Mr. Kresel, he is asking now for information to get a basis for the witness' valuation of these patents. That is, the witness has

placed a valuation on them in the light of the German situation, as I understand it. Now, then, whether that will be proper when we come to weigh it on the scales of justice, I do not know. The objection is overruled in the usual way.

MR. ANDERSON: All objections are overruled in the usual way, unless otherwise stated, I understand.

XQ. 334. (Continued). Will you answer the question.

A. I know what concerns my department, that is, the patent department. I know the patents, the profits that are obtained under the Badische patents for the goods that we sell and manufacture. But I am not sure about what is ultimately made out of these profits. I told you what profits we have made, but what is done with the profits, that is not my business.

XQ. 335. You say that as an officer of this company you do not know whether its profits are pooled with the profits of the other concerns in this community of interest; is that your testimony?

A. No. You must understand in so big a concern the business is divided up, and one man cannot know everything.

XQ. 336. Is that your testimony, that you do not know?

A. Yes; that is my testimony.

XQ. 337. Well, do you know that the concerns in this cartel interchange patents?

A. Yes, I know that they do not interchange patents.

XQ. 338. You know they do not interchange patents?

A. No.

XQ. 339. And have never done it?

A. No. Patents are reserved to each firm.

XQ. 340. Pardon me.

A. The patents are reserved to the firm which produces them.

XQ. 341. Well, what is this community of interest then?

MR. ANDERSON: I renew my request, if this is going to be a definition of community of interest, that we ought to have the documents. This was not in the original examination.

MR. KRESEL: It does not appear there are any documents.

THE COURT: I think that goes to value. I will overrule the objection formally.

XQ. 342. You have told us there is a cartel or a community of interest?

A. Yes.

XQ. 343. Interessen Gemeinschaft?

A. Yes.

XQ. 344. You say that you do not know whether they pool profits?

A. Yes.

XQ. 345. You say they do not interchange patents?

A. Yes.

XQ. 346. What is the community of interest?

A. I am not quite sure about this, whether it chiefly consists in certain exchange of experience, the arranging of selling conditions by avoiding underselling and unfair competition between our firm. I don't want to say "unfair", but unsound competition.

XQ. 347. You mean they arrange how much each should sell in a certain territory; is that what you mean?

A. No. I think it is more related to the prices.

XQ. 348. That is, they agree upon what prices they should sell at?

A. Yes, or the minimum prices.

XQ. 349. And that refers to exports as well as domestic?

A. I think so. As I told you, I am not concerned with that business.

XQ. 350. You say you did not interchange patents. Do they issue licenses one to the other?

A. In certain cases, yes. Not general. In such cases where it is in the interest of the community. That is the community of interest.

XQ. 351. During the war, Doctor, these chemical concerns in Germany worked mostly on war work, did they not?

A. I do not know whether it was mostly.

XQ. 352. Very largely?

A. Largely, yes; of course.

XQ. 353. They made poison gas, for instance?

A. Some of them, yes.

XQ. 354. Did not your company make poison gas?

A. Which company?

XQ. 355. Your company.

A. No.

MR. ANDERSON: What can this add to the situation? We are not at war.

MR. KRESEL: I will answer that. We plead in our answer and our separate defense, that one of the considerations moving to the Government for the conveyance of these patents was that the Foundation gave to the Government a perpetual license to use all of them free of charge.

THE COURT: I missed that entirely, Mr. Kresel. It may be my fault, but won't you say it again?

MR. KRESEL: I say, we claim in our separate defense that one of the considerations moving to the Government——

THE COURT: This Government?

MR. KRESEL: Yes, your Honor—for the conveyance of these patents was a perpetual license given to the Government, the Navy and the War Departments, to use free of charge during the entire life of the patents any of them for war purposes, the making of explosives.

THE COURT: Is this question then directed to value?

MR. KRESEL: Yes, your Honor.

THE COURT: As showing what?

MR. KRESEL: As showing the value of these patents for the purpose of making explosives, war purposes.

THE COURT: And the ultimate showing being that the value placed by this witness upon those patents is from the German standpoint and not from the standpoint of the sale made by the Alien Custodian in this case?

MR. KRESEL: Yes, your Honor; and not only that. I want to follow that up later with showing that in the manufacture of the products that he spoke of, there were others that he did not mention, namely, products used for war purposes.

THE WITNESS: Your Honor will permit me a remark?

THE COURT: No. Mr. Anderson, I have his contention. Do you want to be heard?

MR. ANDERSON: I think it would probably be better if I state my position at greater length there. In the first place, in reply to Mr. Kresel's suggestion that this relates to his affirmative defense, he is making the witness his own witness, of course.

THE COURT: I do not understand it that way. I will be very glad to hear you on that, Colonel Anderson.

MR. ANDERSON: If your Honor will permit me,

the claim as now stated—I won't take the time to go to the answer—is that one of the considerations to the Government of the United States for the sale of these patents to the Chemical Foundation for $250,000 was the benefit accruing to the United States by having the right to use these patents for war pu poses; that is, without paying license fees —for strictly war purposes.

In the first place, I do not concede that such right is reserved in this case. That will involve an argument on the assignments and I am not going into that now. But as a matter of law, since the Government of the United States had seized these patents and had a perfect right under the law to confiscate them, and held them in its possession by Act of Congress, what possible consideration could it be to the Government of the United States, if it wanted to take them from the enemy at a nominal price, to turn them over to some corporation which might allow it to exercise the rights which the United States under the law could exercise without consulting the corporation. Therefore, there could be no such consideration running to the United States, because the United States got nothing by turning the patents over to somebody else, assuming that it reserved to itself the right which it had under the law absolutely without turning them over and before it turned them over.

THE COURT: In order to help me there, Colonel, would it follow or not that if the United States is selling something, but is not selling it all, the part sold may be of less value than if it had sold all. We are assuming that the title was in the United States, that the whole title to the patents was in the United States the day before the sale. If I understand Mr. Kresel, it is that the

United States did not sell to this purchaser the entire interest, but it held back and reserved a certain right that would not go with the title, but which was reserved; and which right, I assume Mr. Kresel intends to contend, was one of the valuable rights under the patent.

MR. ANDERSON: Yes, your Honor, but this transaction took place after the war and the sole question of value here involved is the commercial value of these patents. I asked only for the earnings derived from importations into the United States at a time when the war was not in progress; and therefore it was purely commercial importation. Therefore, the question of whether these patents could be used by the German Government or might be used for any purpose in time of war or could be used by the United States Government in time of extraordinary emergency such as war, cannot have any bearing upon the commercial value of these patents for commercial purposes. My question was in every instance this morning limited to the commercial fair market value for commercial purposes.

I did that for the reason, among other things, first, that it had nothing to do with Government use; and second, I did not want to get into an argument in advance on a question which goes to one of the main legal propositions in this case. I wanted to get by this deposition, if I could, without doing it. At the proper time I will raise the question.

THE COURT: Then your contention, Colonel Anderson, is that the evidence which you adduced from this witness was only the commercial value and not the full value of the patent?

MR. ANDERSON: Yes, related to the commercial value, strictly on the commercial value. Now,

whether there was any value in the patent for some other purpose than its commercial value, I have not inquired and do not propose to inquire, because the commercial value in my judgment is sufficient to meet the point that I have to make; and I do not think the United States Goverment has any concern with that question when we come to it.

I do not care to go into the question now except not to leave the question unanswered.

I would like, with your Honor's permission, to make this additional statement for the witness. I told him he must answer the questions of counsel, of course. I should have said, which I assume the witness of course would know, that if he did not know of his own knowledge, he had a right, if he did not know actually, to say he did not know because in some instances, after saying he did not know, he has undertaken to state certain matters as to agreements, etc., as to which he cannot testify.

THE COURT: Of course, that ought to be modified, Colonel, just a bit. I have got to assume at this point that this is cross-examination. Of course, one of the very difficulties of counsel in cross-examining a witness sometimes is the answer "I do not know"; and in cross-examining, counsel has a right, by any number of questions he desires, to show that he does know.

MR. ANDERSON: Undoubtedly so. What I meant was that if he absolutely did not know, he was under no compulsion of trying to answer something he did not know about. I thought probably the witness, being unfamiliar with our procedure might do that. I know Mr. Kresel would not want him to do that, but it seemed to me, he might.

THE COURT: Do you want a formal ruling at this point or do you want to say anything in reply, Mr. Kresel?

MR. KRESEL: I simply want to point out, your Honor, that quite aside from any consideration remaining with the Government, I am entitled to inquire on this line for this reason also; that the witness this morning undertook to describe certain products which were manufactured under these patents. He said nothing about any products that were manufactured for military purposes.

I think I have a right to develop all of the products that were being manufactured under these patents in Germany and to show, if I can, that the witness' judgment as to the value of the patents is based not only upon the products that he mentioned this morning, but upon all the other products.

THE COURT: The objection is overruled.

By MR. KRESEL:

XQ. 356. During the war, the chemical concerns who were in this community of interest manufactured, to a very large extent, explosives for the Government, did they not?

A. Yes.

XQ. 357. Indeed, the Haber patents that you testified about this morning were the patents under which the German chemical factories were enabled to extract the nitrogen from the air to combine it with hydrogen and produce ammonia, which is an essential in the making of explosives, is it not?

A. Yes, it is.

XQ. 358. But for the fact that the chemical concerns in Germany were enabled by this Haber process to supply the German Government with the essentials for the making of explosives and poison gases, the

German Government could not have continued with the war, because the Chilean Nitrates, from which explosives had theretofore been made had been cut off; is that right?

A. Ammonia patents have nothing to do with poison gases.

XQ. 359. Well, I will take your answer as to that, but I am not confining my question simply as to poison gases?

A. But you mentioned them.

XQ. 360. Also as to explosives, is it not the fact?

A. I think so.

XQ. 361. That before the processes under the Haber patents were perfected, explosives were made from Chilean nitrates which were imported from Chile?

A. Before the patents were perfected?

XQ. 362. Yes, before you could get this atmospheric nitrogen by the Haber patent?

A. Yes.

XQ. 363. And of course, very shortly after the war started, the British blockade cut off the importations from Chile?

A. Yes, sir.

XQ. 364. The value, therefore, of the Haber patents to the German cartel included the value of being able to supply the Government with the essentials for explosives, did it not?

A. No, that is entirely wrong.

XQ. 365. You spoke of about 450 to 500 patents that had been seized here, belonging to your company?

A. Yes.

XQ. 366. Did your company at any time since taking out any of those patents and up to the time that they were seized, manufacture under any of them in the United States?

A. I think not.

XQ. 367. So that these patents stood here and were taken out by your company, not with the purpose of manufacturing under them in the United States, but for the purpose of making it impossible for any Americans to produce either the article which was covered by a product patent or use the process, if it was simply a process?

A. No, that is not the purpose.

XQ. 368. What was the purpose in taking out these patents, if during all these years, your company did not turn a wheel in making anything under them in the United States?

A. The purpose was to secure us the right of importing dye stuffs and stopping German firms from maufacturing products and importing them; and on the second hand, Swiss firms and British firms from manufacturing them and importing them; and only slightly may it have been to stop American manufacturers from manufacturing them. But I do not think this was the idea, because there were no American manufacturers that we had to fear.

XQ. 369. You are quite right. There were none. Now, Doctor, the product patents gave you the right to prevent any other manufacturers from importing into the United States the article covered by such a patent, did it not?

A. That is it.

XQ. 370. In other words, with these patents taken from the United States Government, you sought to have a monopoly here with reference to such articles as were covered by the product patents, not only a monopoly against Americans but also against any other nationals from any other Government that might desire to import?

A. That is the real nature of a patent, yes.

XQ. 371. Again, Doctor, these chemical concerns in Germany——

A. Firms. You mean firms.

XQ. 372. Well, we use the term interchangeably. Still I will use the name "firms".

A. We use the term, simply for illustration—we use the term "concern" for a trust.

XQ. 373. Oh, I do not mean that. I mean firms. These firms that were in the community of interest, in the development of many chemical products, were able at very short notice to turn their plants into producing explosives and poison gas, were they not?

MR. ANDERSON: If your Honor please, I object to that. We are not fighting the war.

THE COURT: No, we are not, Colonel. I will hear you as to the relevancy, Mr. Kresel. I do not see it at the moment.

MR. KRESEL: If your Honor please, that is in line with the other questions that we have had upon the additional production of articles, going to the value of the patents, which the witness did not mention this morning.

THE COURT: This is still addressed to value?

MR. KRESEL: Yes, sir.

THE COURT: The contention being that in the value that he placed upon these patents, he was looking at it from the German standpoint.

MR. KRESEL: Yes, your Honor.

MR. ANDERSON: May I suggest, if your Honor please, the question of value this morning related to the United States patents exclusively; that is, to the value of the right of importation which they controlled and manufacture. The testimony as to the amount of income related exclusively to the income derived from products imported into the United States.

MR. KRESEL: Under the German patents.

MR. ANDERSON: Suppose they have in Germany an enormous value. Suppose they can convert their goods into war products. What has

that got to do with the value of the United States patents that does not help him.

MR. KRESEL: You miss my point, Colonel. It is my fault. I did not make myself clear. What I am trying to say is, your Honor, that by reason of the peculiar facilities of these large German chemical concerns that have been in the field for generations, the value of these patents, because of the number of products that they can make under them is something upon which a value of the same patents in the United States cannot be based.

THE COURT: Colonel Anderson's answer to that is that he did not attempt to base it on that, but that the only use theretofore of those patents in the United States was of German patents sold in the United States from which a commercial profit of so many dollars was derived at a certain time; and that the valuation of this witness having been predicated upon that premise or that fact, that necessarily, in reaching that conclusion, he excluded the basis which you are now attempting to show. That, as I understand is the difference between you. You, as I understand, were suggesting that you have a right to inquire as to all these facts and let the Court draw its own conclusion as to whether it was possible, from his standpoint, to base a valuation, his valuation, on precisely what he said, without taking into consideration other things.

MR. KRESEL: In other words, I am not concluded by this witness' statement.

THE COURT: Not at all, but is that your view?

MR. KRESEL: Exactly. Your Honor has that

THE COURT: Is there anything you want to perfectly in mind.

put on the record, Mr. Anderson, before the ruling?

MR.. ANDERSON: I just wish to make this statement for the record, that the direct examination of this witness on values was confined to the value of patents issued by the Government of the United States, seized and sold to the Chemical Foundation in the United States and that the sole inquiry was directed to the value of those patents in the United States to the owner in Germany.

THE COURT: To the German owners.

MR. ANDERSON: Yes, to the German owners. True, the various elements are under the control of those owners, the control of importation, the control of manufacture, which the patent law gives to a patentee; and therefore, what use can be made of those patents in Germany, what use may have been made of them in Germany, and what the German manufacturer can do with his plant, not only including the owner of this but all other German manufacturers, is entirely outside of the direct examination or of any appropriate or proper cross-examination thereon, as relating to elements that were in any way involved in the inquiry on direct examination.

THE COURT: The issue is very clear. A formal ruling is made overruling the objection.

MR. ANDERSON: I understand all this examination is to be subject to objection and the usual ruling.

MR. KRESEL: That is my understanding, your Honor.

XQ. 374. Will you answer the question.

A. None of the plants for these patented products here could be converted into a plant for poison gas. They do not relate to poison gas and do not relate to ammunition.

XQ. 375. And you mean that the plant which manufactures dye stuffs was not, in point of fact, during the war, used for the making of essentials that went in as ingredients of explosives?

A. No plants for these patented dye stuffs. Perhaps a plant for some intermediate which is very old and can be made everywhere, but not the plants for the patented products. That is what I mean.

XQ. 376. But the dye stuffs are made from intermediates, are they not?

A. The patents are not for the intermediates.

XQ. 377. But dye stuffs are made from intermediates?

A. Yes, of course.

XQ. 378. You mean that among the 450 patents that you testified about this morning, there are no patents covering intermediates; do you really say that?

A. Maybe some of the others, but none of them are related to ammunition or explosives. I am not quite sure about this.

XQ. 379. I did not ask you about patents covering explosives. Do you mean to say that none of your patents cover intermediates?

A. Yes, they do, some of them.

XQ. 380. What I had in mind specifically, for instance, just to illustrate the point that I am asking you about in making a dye called "sulphur black"——

A. That is not patented.

XQ. 381. Won't you let me finish my question?

A. Pardon me.

XQ. 382. In making a dye called "sulphur black" —that is a black dye, is it not?

A. Yes, I know.

XQ. 383. A slight variation in the final state of that manufacture would turn the product into picric acid, would it not?

A. Yes.

XQ. 384. And picric acid is one of the essentials used in the manufacture of explosives, is it not? It is an explosive, in fact?

A. It is, but it is not much used. It is not used to a large extent, I do not think.

By Mr. Kresel:

XQ. 385. All right, I will take T. N. T. One intermediate which is produced in the maufacture of coal tar dyes is a substance called paramonatoluol?

A. Yes.

XQ. 386. And from that T. N. T. is made, is it not?

A. It may be.

XQ. 387. It can be made?

A. In a similar way, yes.

XQ. 388. But it can be made?

A. But, permit me to say, it has nothing to do with these patents.

XQ. 389. It has to do with intermediates?

A. Nothing with these patents.

XQ. 390. It has to do with intermediates?

A. The patents are all intermediates.

XQ. 391. However, for some intermediates, you have just said so?

A. Yes, but not for these.

XQ. 392. Let me go on please, do not argue with me. Now, in Germany, the Government assists the dye works, does it not?

A. No, that is entirely wrong.

XQ. 393. Has it ever?

A. No, never. That is propaganda. I saw it in your defense, but it is quite untrue.

XQ. 394. Did it during the war?

A. No.

XQ. 395. You mean——

A. The dye stuff industry has not been backed by the Government.

XQ. 396. Now, listen to me. Let me put my questions clearly to you, and then you can answer. Do you say that during the war none of these chemical concerns who were working for the Government were financially assisted by the Government?

A. Yes, they were, but not the dye industry.

XQ. 397. Well, did not you tell us that some of these chemical concerns that were engaged in the manufacture of dyes in peace times were converted into war-producing material during the war, did not you tell me that?

A. They took up additional work for war.

XQ. 398. Additional war work?

A. And were converted.

XQ. 399. Now, at the outbreak of the war, Doctor, how much of the world's supply of dyes did Germany supply?

A. I am not sure about that.

MR. ANDERSON: Is this—can this have any bearing upon the direct examination of this witness?

MR. KRESEL: May I answer that, your Honor?

THE COURT: Yes.

MR. KRESEL: Yes. My point is that the amount of dyes which were supplied by this combination in Germany indicates the strength of that combination. It indicates the monopoly that it had of producing and supplying dye stuffs, and it indicates what the value of such a monopoly of these patents would be.

MR. ANDERSON: If your Honor please——

MR. KRESEL: It is actually the same point that we have been arguing.

MR. ANDERSON: If your Honor please, sup-

pose the dye industry in the United States is a Trust—I mean in Germany it is a Trust—suppose the dye industry in Germany have enormous power. Suppose it is combined to get that power. If one of the members of that organization, or whatever you call it, I do not know whatever it is, or any other member has secured patents from the Patent Office of the United States in accord with the laws of the United States, and we are inquiring into the distribution of those patents and their value, what can the power of that industry in Germany, or its organization, or conduct of its business have to do with the value of the patents in the United States, located in the United States, and which can not have any bearing upon that power?

MR. KRESEL: May I make one further observation, your Honor?

THE COURT: Yes.

MR. KRESEL: If, as we claim, there was this combination, which had this tremendous power, would not that affect the value of the patents to an American here, who would buy them, and try to start up in business?

MR. ANDERSON: Allow me for a moment——

THE COURT: I was wondering, what Mr. Kresel was leading to in this situation. If the Germans prior to the war had a world-monopoly on dyes—whether the value to them on these patents which would not only tend to preserve intact that monopoly, but which, so far as I am now advised, would have kept the monopoly absolutely intact—whether the value of these patents in such a world-wide monopoly would not be far in excess of their value to any other person, because the minute a competitor got into the field, whether the mere keeping out of a competitor in a field as

large as the United States, would not such a world-monopoly—would that not give to these patents a value far in excess of what it would have been to A, B or C. That is the thing that I have been wondering about, as to whether he was not coming to sooner or later.

MR. KRESEL: That is what I have been directing this examination to.

MR. ANDERSON: If your Honor please——

THE COURT: I cannot decide that now, Colonel, and if that element is in it, anything tending to show the German monopoly, which so far as I now see it in the cross-examination, is equivalent to world-monopoly—anything tending to show that monopoly — would on that theory, if that theory is plausible—I do not know whether it is or not now—would it not be relevant to the valuation placed upon the patents by this man. I assume it would, at least, I would not be prepared now to negative it.

MR. ANDERSON: If your Honor will permit me to put this on the record in view of your Honor's statement, that I do submit that for a Court or any one else to undertake to draw a distinction between the value of patents for commercial purposes which give an exclusive right of manufacture, owing to importation to an individual or corporation of fifty million dollars as distinguished from a combination or corporation of two hundred million dollars, or two billion dollars is drawing a bow a little fine on the matter of distinctions, and seems to me so remote that it would be going into the realm of speculation, as to values, far beyond anything the Courts have ever gone into. I merely put that on the record, as, of course, I will not ask your Honor to consider

questions which involve a serious question at this time, and I renew my motion.

THE COURT: Is there such a question, will such a question ultimately be involved in this case?

MR. KRESEL: It will certainly be, your Honor, and it is raised by our separate defense.

THE COURT: I have no authority——

MR. KRESEL: Your Honor has not had time to study it.

THE COURT: I have not read particularly the bill, nor have I seen your answer at all, I am sorry to say. Objection overruled on the same basis.

THE WITNESS: What was the question.

XQ. 400. The question, Doctor, is for you to tell us what percentage of the world's supply of dye stuffs was supplied by Germany, prior to the war, just before the outbreak of the war?

A. I am not quite sure about the statistics, but I am quite sure about the fact that the dye stuffs which have been manufactured under these 470 patents also represented only a very small percentage of the world's supply of dye stuffs.

XQ. 401. But, Doctor, did not you say—I do not want to be offensive, but you are dodging the question and not answering it—I am not confining you to these patents, I am speaking broadly; but is it not a fact that Germany had a practical monopoly of manufacturing and producing dye stuffs all over the world?

A. No, that is no fact. I told you before that there are large manufacturers in Switzerland, and in England, and this Society for chemical industry, in Berlin and Elbenstein, and Brussells, and Holliday in England, and a lot of other firms.

XQ. 402. You seem to be much better informed of outside of Germany than in; but let me put that question to you: Is it not a fact that at the outbreak of

the war, Germany produced nine-tenths of the dye stuffs that were consumed in the whole world?

A. I am not certain about percentage.

XQ. 403. Whether you are certain or not, give us your best estimate; you have been giving us estimates on it; give us an estimate of that?

A. I can not give any estimate.

XQ. 404. You won't undertake to do that?

A. No, I can not. I wish I could, but I can not.

XQ. 405. And don't you know, Doctor, that when the war broke out, and the United States could not get the German dyes, that the textile industry of the United States was absolutely paralyzed?

A. I have also heard that in the United States, that there was no dye stuff industry at all, but that is no evidence that Germany had a monopoly. There was a monopoly in England and Switzerland.

XQ. 406. Surely, so far as the United States was concerned, Germany had a monopoly of dye stuffs before the war, had not they?

A. No.

XQ. 407. Have you answered it?

A. There was export from Great Britain and Switzerland, and that export was cut off because those countries needed their home production.

XQ. 408. Did you tell me that your patents covered—your product patents did not permit importations from England, Switzerland and France?

A. But I told you that was only a small percentage of patented dye stuffs, and you reversed the question and asked for all the dye stuffs, that is the difference.

XQ. 409. And that is your idea?

MR. ANDERSON: I object to some of this argument between counsel and witness. It is not cross-examination.

MR. KRESEL: I am through with that.

Mr. Anderson: Let the witness answer the question.

XQ. 410. Now, you undertook to give us the fair market value of patents, did not you?

A. Yes.

XQ. 411. Just what do you mean by the market value of a patent; do you mean that there is a place somewhere, where you can go and buy patents; is there an exchange where you can buy patents?

A. You know yourself that there is no such place.

XQ. 412. Then, what do you mean by a market value of patents; I want your meaning of it, so that we can see what your testimony is worth?

A. I think the market value of the patent is the value which the patent had for the inventor or the owner of the patents, and for which he probably would have been willing to sell them.

XQ. 413. Well, of course, if that is the witness's understanding, and that is what you understood by—that is what you mean by your testimony when you gave the market value of these patents, was it?

A. Yes, I think that is a possibility.

XQ. 414. All right. I am quite content with your answer. Now, the value of the patent depends upon the person that owns it, being able to prevent others from using it, does it not?

A. No. The person is quite immaterial. The value of the patent is defined by the value of the product which is manufactured by it. The owner is of no importance whatever.

XQ. 415. Apparently you did not understand the question. I say the value of a patent lies in the fact that the person that holds the patent can prevent anybody that he pleases from manufacturing an article covered by that; is not that right?

A. No, that is negative, positively stating it. It

is the profits which he makes out by virtue of the patent.

XQ. 416. Of course he makes the profits because nobody else can manufacture without his permission?

A. Of course.

XQ. 417. We agree on that, don't we?

A. The patent gives the right of preventing others.

XQ. 418. Let me see if you will go along with me this far—a patent is valuable to a person who possesses it because he can either let somebody manufacture under it or refuse to let anybody manufacture under it; is not that right?

A. On the one hand, yes.

XQ. 419. Yes, take your concern, for instance, before these patents were seized, when you owned them—

THE COURT: Pardon me, may I make this inquiry, Mr. Kresel; is not that the matter of law; and cannot we——

MR. KRESEL: It is just a preliminary question, your Honor, to the question that follows:

XQ. 420. Would it make any difference in your opinion, as to the value of a patent, the fact that the person who owns it was compelled to give licenses to use that patent to anybody and everybody that applied.

A. Yes, of course, that raises——

XQ. 421. You have answered my question, "yes". Of course, that is all I want.

MR. ANDERSON: That is subject to objections your Honor understands.

THE COURT: Yes.

XQ. 422. When you gave us this morning——

MR. ANDERSON: I wish to state on the record in addition, the fact does not appear in this case, that any person was compelled to give licenses, or that the owners at the time of the sale of these

patents, whoever they were, were required to give licenses; and therefore the question is entirely outside of the facts as disclosed in this case.

XQ. 423. When you assumed to give us this morning your estimated value of these patents, did you assume that there was a clear title to all those patents?

A. Of course, yes.

XQ. 424. And did you assume that when they were sold, they were not subject to any outstanding licenses?

A. It depends on the number of licenses; when there are only very few, they may not alter much the value of the patent.

XQ. 425. But you are not answering my question, if you will pardon me for saying so. I am asking you directly whether when you gave to the Court this morning your opinion as to the value of the patents, that opinion was based upon the assumption that no licenses affecting the patents were outstanding, just yes or no?

A. Yes.

XQ. 426. Now, Doctor, I understood you to say this morning, that you had repeatedly bought patents, so that you are familiar with methods of buying and selling patents; am I correct in that?

A. Yes.

XQ. 427. Well, ordinarily, when you buy a patent from an inventor, you get from him all the information that he possesses as to the manner of operating under the patent, don't you?

A. Yes, ordinarily.

XQ. 428. Certain; and you get from him the result of his experience in operating, commercially operating under the patent, don't you?

A. Not commercially, mostly only——

XQ. 429. Strike out "commercially"—experience in operating under the patent, don't you?

A. Not "operating", that goes too far.

XQ. 430. Experience in producing under the patent?

A. Experience—but "using" goes too far, it tends to a commercial extent.

XQ. 431. I will let you use your own language, experience in doing what with the patent?

A. Simply to show its practicability.

XQ. 432. All right, and ordinarily, when you buy a patent, you obtain from the inventor or the manufacturer for whom you buy information as to the kind of plant that is necessary in order to work the patent, don't you?

A. No.

XQ. 433. You mean you buy a patent, and then invent your own plant?

A. The plant in those cases is very simple and can be shortly erected by our engineers. What we need is a sample, a sample how to carry it out.

XQ. 434. Yes. But if it is a patent that had already been commercially worked, of course the plant would have been there when you buy the patent, you buy whatever experience as to the plant, likewise, don't you?

A. I do not think that we agree over that——

XQ. 435. Whether you agree with it or no, that would not ordinarily accompany the sale of the patent, is it not so?

A. I did not get that.

XQ. 436. I say, ordinarily, if a manufacturer has operated under a patent, has built a plant for instance, and he sells that patent, the purchaser would get any information that the vendor has as to the kind of plant that is necessary?

A. That is very seldom, very rare cases.

XQ. 437. That is rare, is it not?

By THE COURT:

Q. 438. If the purchaser needs it, or that the inventor will furnish that disclosure, which do you mean?

A. Simply an example how to carry it out in the laboratory, that is sufficient for us.

By MR. KRESEL:

XQ. 439. Now, you said this morning, two or three times, that your patents were so drawn that an incompetent chemist can operate them?

A. Yes.

XQ. 440. Of course, you know, don't you, that before 1919, there was practically no chemical industry in this country?

A. Yes.

XQ. 441. And of course that America was not as rich in skilled chemists, as Germany was?

A. Of course.

XQ. 442. And do you really say, Doctor, that these patents that you have been testifying about, are so drawn that any patent chemist can take them and work them commercially?

A. In this country?

XQ. 443. In this country?

A. Yes, that does not require technical skill, but simply the scientific skill, and such chemists were in your country. I do not mean that it requires extraordinary skill also, but simply it requires more than a student has, of course, we know.

XQ. 444. You take your Haber-Bosch patents, for instance. You took out those patents not only in the United States but in other countries?

A. Yes, nearly everywhere.

XQ. 445. Belgium, for instance?

A. Belgium too.

XQ. 446. In France?

A. Yes.

XQ. 447. And I assume that your patents and theirs were equally as full in disclosure as those that you took out here in the United States?

A. Yes.

XQ. 448. And I think you will go along with me to this extent, won't you; you will say that France had at least as good chemists as we did in America?

A. Of course, yes, she has.

XQ. 449. And well, don't you know that notwithstanding that France had your patents, as we had your patents here, that the French Government is paying two and a half million francs to the German Chemical Cartel, for information as to how to manufacture under these Haber-Bosch patents?

A. They are not paying two and a half million francs. They are paying fifty-nine million francs, but not for the information—for the patents and for the information.

XQ. 450. For what?

A. For the patents, and for the information.

XQ. 451. But they had your patents; they had seized them, did not they?

A. They gave them back.

XQ. 452. Well, they had them before?

A. They had them before.

XQ. 453. And if the patents disclosed the process, they did not have to pay anything for any information, did they?

A. They did not pay for the information. They paid for the patents and for the information.

XQ. 454. But that is what you said—patents and information?

A. Yes, sir.

XQ. 455. Now, there were patents here on Salvarsan, were there not, you know that?

A. I know, but I am not acquainted with the Salvarsan business. It is not our firm.

XQ. 456. Now, to establish a chemical industry in a country like America, which did not have any, would require a large amount of capital, would it not?

A. Yes, I see it has been found, that capital.

XQ. 457. Would it require a large amount of capital?

A. Not so extraordinary large.

XQ. 458. And do you think, Doctor, that you are frank in making these answers?

A. Yes.

XQ. 459. And it would require, would it not, the building of a plant?

A. Of course.

XQ. 460. A large amount of plant?

A. It depends on the amount of dye stuff which is to be produced.

XQ. 461. If it was to take the place of the German dye stuffs that were being imported before the war, there would have to be quite a large commercial industry, carried on here, would not there?

A. I do not know. I do not think the amount of dye stuffs imported was extraordinarily immense.

XQ. 462. Now, your dye patents covered what are known as vat dyes, did not they?

A. Yes.

XQ. 463. Were there other sorts of dyes that could be used in the place of vat dyes?

A. Yes.

XQ. 464. Was there a form of dye called the Algo dye?

A. Yes, but it did not belong to our firm——

XQ. 465. I am asking you now as an expert, do you see?

A. Yes.

XQ. 466. You are a chemist, an expert?

A. It was simply to avoid confusion, if you wish to hear this, because we are concerned here with partnership credits.

THE COURT: Mr. Kresel, do you care——

MR. KRESEL: I will be through, if your Honor will indulge me, I shall finish with this witness in about half an hour.

THE COURT: I was going to inquire as to whether you care to finish now, or take a recess until say half past seven; if you are going to finish in half an hour, you can finish now if you prefer.

MR. KRESEL: I shall finish in half an hour. How about you, Colonel?

MR. ANDERSON: I think that if Mr. Kresel finishes in half an hour, I certainly will not take over half an hour for any re-direct and we will get through.

THE COURT: I shall take a recess at the end of an hour in any event.

MR. ANDERSON: If you will reserve me half an hour to finish the re-direct, I think we shall finish.

THE COURT: You may proceed.

XQ. 467. Now Doctor, I wish you would tell us what patents you bought in 1919, giving the name of the person from whom you bought them, and describing the patents?

A. I did not get it, pardon me.

(Question repeated.) I cannot tell whether we bought any in 1919—I cannot tell.

XQ. 468. I ask you the same question as to the year 1918?

A. I cannot tell it, any year.

XQ. 469. Is your answer the same as to 1918, as 1919?

A. Yes.

XQ. 470. I ask you the same question as to 1917. is your answer the same as in reply to my question with reference to 1919?

A. Yes.

XQ. 471. Now, you assigned this morning, as the value of the 58 so-called Haber patents—you said that it was seventeen million dollars?

A. Yes.

XQ. 472. Did you arrive at that figure by assigning a separte value to each of the fifty-eight?

A. No. They can not be separated as a whole.

XQ. 473. "No" was the answer?

A. No—yes.

XQ. 474. Well, will you enlighten us as to how you came to the conclusion that it was seventeen million dollars?

A. Yes, I can. I arrived at this figure in that way, first, Germany is now producing three hundred thousand tons of fixed nitrogen by the Haber-Bosch process. The conditions in Germany and in the United States of America, as to the consumption of nitrogen fertilizers were about the same before the war. I always refer to the time before the war, because the conditions are so directly different since then.

XQ. 475. I did not get that last?

A. The conditions are different. For that purpose I refer to the time before the war—excuse me.

XQ. 476. Then you are talking about 1913?

A. 1913.

XQ. 477. Go ahead.

A. The conditions are not much far different now as I understand from your magazines, and official reports. The United States is about producing one hundred thousand tons of nitrogen in coke ovens and has a big demand for salt petre, which amounts to about the same quantity, one hundred thousand tons of nitrogen, and those were the conditions in Germany,

about so, and we constructed in Germany, the Oppau plant which is now producing one hundred thousand tons of nitrogen, and the Mersenburg plant, which is producing two hundred thousand tons; and the production of these two plants, is gladly taken up by the agriculture and I suppose—not I suppose—I am sure that the United States would be ready at any time to take up a supply of as little as seventy-five thousand tons of fixed nitrogen yearly, and this, at the rate of one cent royalty per pound of nitrogen, and the average term of ten years for the outstanding life of the patents gives seventeen millions of dollars, and another basis is the contract you have mentioned that we have had to make with the French Government and this provides for the establishment of a plant for thirty-six thousand tons, and I understand the thirty-six thousand tons is a rather small figure; and if my concern assumes that seventy-five thousand tons would be likely to be consumed in the United States, which has a much bigger area than France has, that is a very moderate basis.

XQ. 478. Is that all?

A. That is it.

XQ. 479. Do I understand then, that you assume that if the United States—or if somebody in the United States could not produce nitrates under these Haber patents——

A. Or ammonia.

XQ. 479 (continuing)—and if the demands of the country were such as to absorb a supply of three hundred thousand tons a year——

A. No, not so much.

XQ. 479 (continuing)—that then the profits that would be realized from that, would be such as to make patents worth seventeen million dollars?

A. Yes, but it is a misunderstanding. I did not suppose that the demand must be increased to three

hundred thousand tons, this ammonia production may substitute a part of the imports from Chili. It may substitute the whole production of the United States and create a national industry.

XQ. 480. You realize, don't you, Doctor, that you are asked to give the value of these patents to the American industry, not to Germany?

A. Of course, yes.

XQ. 481. And that is your testimony, is it?

A. Yes.

XQ. 482. Well, have you in all your reading of magazines and official documents which you mention informed yourself as to the actual result of the working in the United States under the Haber patents since 1919; without theorizing now, do you know what the actual results were?

A. Yes, I know thereabouts.

XQ. 483. Will you tell the Court what you have learned as to the actual results?

A. I have learned that a plant in Syracuse is producing three thousand tons a year, but I have also learned that the Nitrogen Committee which was instituted in 1916, recommended that the United States Government should build a plant for a capacity of about thirty thousand tons, an initial plant.

XQ. 484. Then, your information is that the progress of the art here, in so far as working under the Haber patents since 1919, is that a plant in Syracuse has been built which produces three thousand tons a year?

A. Yes, sir.

XQ. 485. Now, you say that you can not separate these fifty-eight patents and assign a value to each of them. What is there extraordinary about that that makes it impossible to do that?

A. They belong together. They cover the various steps of the process which follow after the other,

one for the nitrogen and one for the combining of ammonia, and the third for the separating of the ammonia, and all for the same subject.

XQ. 486. In other words, you mean that ammonia can not be producel under these Haber patents without using all fifty-eight of them?

A. No, I do not mean that, not all the fifty-eight must be used.

XQ. 487. Well, which ones may be used?

A. I can not state it from memory. It depends on the local conditions, other circumstances. Some must be used, at any rate.

XQ. 488. Have you familiarized yourself with the purposes to which the production of this Syracuse plant have been used?

A. For which the products are used?

XQ. 489. Yes.

A. No, I do not know.

XQ. 490. Don't you know it is being used only for refrigeration and not for fertilizer?

A. I do not know, but it may be right. The products of the Oppau Mill are also used for other purposes, also for refrigerators.

XQ. 491. You make fertilizer in Germany, don't you?

A. Yes, and liquid ammonia for refrigeration and other purposes.

XQ. 492. And Germany now produces three hundred thousand metric tons a year?

A. Of nitrogen, yes, including nitrogen.

XQ. 493. By those Haber patents?

A. Yes.

XQ. 494. Now, what was it that increased the value of these Haber patents in your mind, from the seventeen million dollar figure this morning to twenty million dollars this afternoon?

A. That was—it was supposed the consumption

or production of the United States would be one hundred thousand instead of seventy-five thousand, that is the difference, a rather small difference.

XQ. 495. And of course, if you assume that the consumption would be five hundred thousand tons, the value would thereby be increased?

A. I would not assume that. That is too much, perhaps. I wish to give a minimum and a moderate estimation, which can surely be fulfilled.

XQ. 496. Yes, but the result is that only three thousand tons a year have been produced?

A. That is no evidence.

XQ. 497. Now, the value of the process under the Haber patents, would depend somewhat upon whether or not Chilian Nitrates could be bought in the market at a cheap rate, would it not?

A. It never can be bought as cheap as synthetic ammonia.

XQ. 498. And yet you know that Chilian nitrates are being very largely used in the United States at this time?

A. Yes, I know they have also been very largely used in Germany before the war, and, nevertheless, synthetic ammonia has superseded it, or shut it off.

XQ. 499. Well, from such investigation as you have made, would you say that the United States is continuing to use more expensive Chilian nitrates instead of ammonia produced under the Haber patents, because they can not produce it?

A. No, I do not think that. They can. Perhaps there was not proper management, or other circumstances. I think it ought not to have been impossible to institute——

XQ. 500. Of course, there is no difficulty in Germany in getting the proper management. You have not found any difficulty?

A. No.

XQ. 501. You have found no difficulty in Germany in installing the proper plant?

A. No.

XQ. 502. You have found no difficulty in Germany in getting the skilled scientific men to work these patents?

A. No, we had no difficulty.

XQ. 503. You found no difficulty in getting all the information that is necessary in order to know how to work these patents?

A. We need not get it. We have it. This is ourselves.

XQ. 504. Now, you were telling us about three tanning products that were made under the tanning patents. Would you mind indicating under which patents those were made?

A. I can.

XQ. 505. You mean, of course, by these product patents, don't you?

A. I don't know whether they are product patents. One is a product patent, 12367405.

XQ. 506. That is a product patent?

A. That is a product patent, 1237405 and 1336759. That is a product patent, and there are patents for tanning, 1216612, 1281494 and 1289280. I think there is one important patent still missing. That is 191480 for tanning.

XQ. 507. You have spoken of Oppau, the factory there manufactures nitrogen?

A. Oppau has not to do with tanning.

XQ. 508. No, I am speaking of nitrogen?

A. Nitrogen, yes, fixed nitrogen.

XQ. 509. And under these Haber patents?

A. Yes.

XQ. 510. Is that a very dangerous process?

A. No, it is not dangerous at all.

XQ. 511. There was a very serious explosion at

that plant, was not there—killed a great many people were not there recently?

A. Yes. There were five hundred killed, but that has nothing to do with the manufacture of ammonia. It was a kind of nitrate which was produced, and it exploded.

XQ. 512. Well now, do you mean to testify that all of your patents, all your dye patents, are both product and process patents?

A. Yes, each single of them, no, not each single some——

XQ. 513. You testified that way this afternoon?

A. That was a misunderstanding, not each single of them, but as a whole.

XQ. 514. Some are product patents, and some process?

A. And some are product and process as well.

XQ. 515. You said this morning that your patents in the United States were substantially like the patents that you had in Germany, did not you?

A. Except for the differences which are——

XQ. 516. Required by law?

A. There is a difference in the laws, yes.

XQ. 517. That is right. Don't you know that there is no such thing as a product patent in Germany?

A. Of course, I know. That is one of these technical differences.

XQ. 518. Well then, none of your German patents was a product patent?

A. Yes, it is, in a certain sense. The German patent law provides that the product is patented by a process claimed for in manufacture, according to the process claimed. The immediate process of the product claimed, is protected with a particular claim.

XQ. 519. Now, you will see, Doctor, that you are not answering my question. This product patent is a

patent which makes it possible for the owner of the patent to prevent anybody from making any article like the one covered by the patent, by whatever method it is made, is not that right?

A. Yes, that is right.

XQ. 520. Now, in that sense, do you mean that in Germany, you could get any such patent?

A. Not technically, but perhaps practically. It is very seldom that another way for making the same product is discovered——

XQ. 521. But if a man does find a different method of making the thing, you can not prevent him from making it?

A. When it is quite a different way—no.

XQ. 522. But not a product patent of the United States—if you get a product patent, to make a certain kind of dye, then, no matter by whatever other method anybody else may make that kind of dye, you can prevent him from doing that?

A. Yes, sir.

MR. ANDERSON: Is not that a question of law?

XQ. 523. You have been here you say since the middle of April?

A. Yes, sir.

XQ. 524. Who is paying your expenses?

A. My company, the Badische Aniline, to make it quite clear.

XQ. 525. I did not get that?

A. The Badische Aniline, to make it quite clear, the Badische Aniline & Soda Fabrik.

MR. KRESEL: The Badische Company. Now then, your Honor, I have a motion to direct to the Court with reference to this witness's testimony, and I will make it now, or I will wait until Colonel Anderson is through, with his re-direct.

THE COURT: It is your pleasure.

MR. KRESEL: I think perhaps it would be better to let Colonel Anderson finish his re-direct.

RE-DIRECT EXAMINATION.

By MR. ANDERSON:

RDQ. 526. Doctor, you were asked by Mr. Kresel about the arrangement between your company and the French Government for the use of these nitrogen patents, for a plant which you say had a capacity of thirty-six thousand tons a year?

A. Metric tons.

RDQ. 527. I beg your pardon; metric tons; when was that arrangement made, what year?

A. It was made in November, 1919, but it got the consent of the French Chamber, just now, in December.

RDQ. 528. What return or compensation or value does that yield for the use of these patents in France?

A. As a whole, I stated fifty-nine million French francs.

RDQ. 529. Fifty-nine million French francs?

A. Five million as cash payment, and fifty-four million as royalties for the production.

RDQ. 530. And that covered a plant with a production of only thirty-six thousand metric tons; is that true?

A. Yes, full capacity.

RDQ. 531. Mr. Kresel in one of his questions said that you, in estimating the value in the United States, estimated the value of the profits on the production of nitrogen, at a plant such as you indicated. I understood you to make your value based upon a royalty of one cent per pound?

A. Yes, that is so, one pound of fixed nitrogen.

RDQ. 532. And you only estimated the value of seventeen million dollars arrived at in the method you described, based upon a royalty, for a license?

A. Yes.

RDQ. 533. Which was a charge of one cent per pound for the use of these patents and processes?

A. Yes, under the royalty.

RDQ. 534. You did not take into consideration at all the profits which might be realized by the manufacturer under that royalty?

A. No, that is not for the whole profit. It is only for a royalty, supposing that a license would have been given to an American firm, and an American firm would have made a larger part of the profits, and only gave us a part, one cent a pound as royalty.

RDQ. 535. You were asked as to the ability of the chemist in the United States to manufacture fixed nitrogen under these patents, as filed in the United States. There are chemists of high capacity in the United States, are there not?

A. Certainly, yes.

RDQ. 536. Is there any practical or technical or scientific difficulty about the manufacture of fixed nitrogen in accordance with the Haber process, from the patent granted by the Patent Office in Washington for the fifty-eight you mentioned?

A. Of course it requires some technical skill, but there is no extraordinary difficulty.

RDQ. 537. You were asked something about the war production in Germany, and the conversion of plants into war products for the manufacture of war products. Did you consider in giving your testimony, as to the value of the various patents as to which you testified this morning in the United States, that is, United States patents—did you consider in any way the war production in Germany, or the use of these patents during the war, as an element entering into the value of patents in the United States?

A. Dye stuff patents for the dye stuff, have nothing to do with war, as I have already stated.

RDQ. 538. Yes.

A. And as to the nitrogen patents, I have said it

is counted on a basis of seventy-five thousand tons of fertilizer, that is a very moderate figure, and would not be sufficient for a war production.

RDQ. 539. But the war production in Germany, or the use of these plants for war purposes, have nothing to do with your answer, according to the value of the United States patents, either on direct or cross-examination?

A. Nothing at all.

RDQ. 540. Was it considered in any way in arriving at the figures which you have given to the Court?

A. No, in no way.

RDQ. 541. Have you read the assignments in this case of the patents as to which you have testified, from the Government to The Chemical Foundation?

A. Yes, I read them.

RDQ. 542. It appears by reference to those assignments, that these rights are assigned by the Government of the United States of the patents or rights to The Chemical Foundation, without any reservation or qualification whatsoever?

A. Pardon me, what page?

RDQ. 543. I am reading page 416 of the original bill of complaint, from Exhibit No. H-1, which covers the greater part of each patent. The assignment is made by the Alien Property Custodian to The Chemical Foundation,——

> "without any reservation or qualification whatsoever, whether by reason of anything contained in the Charter or By-Laws of the said The Chemical Foundation, Inc., or otherwise, and subject only to the provision of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or friendly nations as set forth in the requirements or demands for certain of the said Letters Patent of the United States, applications

for letters patent, trade marks and registration thereof, copyrights and rights, interests and benefits under agreements."

I will now ask this in a hypothetical way, because it will come in after. If it should appear that the agreements referred to in that assignment are merely a release to the United States of any claim on account of past infringement, and is a reservation of the rights and interests of citizens of the United States and friendly nations, in and to those patents, if those rights and interests should be established, would the terms of that assignment to The Chemical Foundation as to patents in which the citizens of the United States or friendly nations had no interest or developed no interest, affect in any way the value of the patents as you have estimated it in your judgment? That is a very difficult question, but I want to get it, because I have got to prove all these things later on.

THE COURT: I do not understand it myself. It is my fault, not yours, but I will hear you first, Mr. Kresel.

MR. KRESEL: We object to it on the ground that it calls from this witness for the construction of a legal document. He is not qualified to give any such construction, and if he were, it is not the subject of expert testimony. We object to it upon the ground that it is immaterial and irrelevant. The document speaks for itself, and if certain facts should later be developed, as Mr. Anderson intimates they will be, the Court can attend to that question without any opinion from this witness.

THE COURT: May I hazard a guess as to what the question is——

MR. ANDERSON: That probably requires very great hazard.

THE COURT: Is that a limitation upon the title or right transferred to The Chemical Foundation, and are you asking this witness in substance, whether such a reservation makes any difference in his opinion?

MR. ANDERSON: That is the substance of it.

THE COURT: That is what I thought.

MR. ANDERSON: In other words, if your Honor please, the witness was asked on cross-examination whether the extension of licenses and experience in producing would affect his judgment on the value of these patents.

THE COURT: The concluding part of your question is what?

MR. ANDERSON: The concluding part of my question is—I do not want to repeat this, and I will ask it not be put on the record. I will try and explain it. The concluding part of my question is this: That eliminating any patents in which the citizens of the United States or citizens of a friendly country might have an interest, which interest is reserved, you see,—and I propose to prove later as to this, to which this provision would apply, eliminating that condition, would an assignment of all the right, title and interest in this patent, without reservation or qualification whatsoever, whether by reason of anything in the By-Laws of The Chemical Foundation or not—would such an assignment impose—would that assignment of that before you affect his value, as that he gave this morning? It does not involve a question of law or fact.

THE COURT: Does it not come down to this—if you establish as a fact that that reservation was not a reservation in fact, and he may have the complete title, we do not need any testimony from him to say——

MR. ANDERSON: Possibly. I think probably your Honor's position on that is correct, and I think it is correct in the second place, the question would be so hypothetical that it would be of very little value, and that we will have to prove by these facts anyhow. I wanted to get this witness' judgment free from that embarrassment, so I find it will be difficult to do it. I won't take up the time. I want to get through. It is not material.

RDQ. 544. Doctor, you were asked if you assigned a value of each of the fifty-eight nitrogen patents, so-called, or Haver patents, and as I understood, you could not, because they must be taken together. I want to ask if you can identify the product patents, and the process patents in the remaining processes other than the dye processes and products?

A. Yes, they can be identified.

RDQ. 545. How long would it take you to make up a list including the product patents and the process patents, separating the two, indicating the separation?

A. There are five hundred patents.

RDQ. 546. Yes.

A. It would take a few hours.

MR. ANDERSON: Mr. Kresel, would it be possible, to save time, for the witness to make that list which I would like to have, and I think you would like to have a separation of the product patents, as he identifies them—do not put this on the record.

THE COURT: I suggest the stenographer take it, and it can be stricken out.

MR. ANDERSON: Would you object to this witness having this in New York, taking a record, and submitting a copy of it, and we can

submit it to all parties, and I think we could save time?

Mr. Kresel: I have no objection.

RDQ. 547. Then, I will ask you, Doctor, to please make up, tomorrow, if possible, and furnish under the oath administered to you as a witness, as you are now, making a list, a list first of the nitrogen patents to which you have referred, or Haber patents second, a list of the tanning patents?

A. Yes.

RDQ. 548. A list of the tanning patents, and then, third, a list of the patents relating to the dye and different processes which you have classified, although not included in the other two classes, and have two copies of that made, and shall we stipulate it, or file it with the stenographer.

Mr. Kresel: He has to divide them into product and processes.

RDQ. 549. And then divide it, each class, into product and process patents, as far as you can do it?

A. Yes.

RDQ. 550. And furnish a file copy?

Mr. Kresel: Send them to you, and you can send us a copy.

RDQ. 551. Or send them to me. Send three copies to me, one of which I will file with your answer, with the stenographer, and one I will furnish to Mr. Kresel, and one to the Court. Will that be satisfactory? I think that will save a lot of time.

The Court: Then those go on the record as given to the stenographer?

List produced at trial and offered and admitted in evidence as "Plaintiff's Exhibit No. 606." *(See Exhibits, Vol. II, page 1438.)*

Mr. Anderson: Yes. If your Honor please, I think that is all.

MR. KRESEL: Now, if your Honor will hear me.

THE COURT: No further questions?

MR. KRESEL: No further questions at all.

We now move that the testimony of this witness given by him upon the direct as to the value of these patents be stricken from the record in its entirety upon the following grounds: first, upon the grounds that were urged in the course of his examination, namely, that he was not qualified upon the basis of facts that he assumes, to make an estimate, and that the testimony was, therefore, immaterial and irrelevant.

More particularly, we now move to strike it out upon the ground that it is apparent from his testimony that he has a direct interest in the outcome of this litigation and is therefore disqualified to give testimony as an expert. Furthermore upon the ground that, according to his testimony, he was testifying, not as to the fair market value of these patents, but as to what his company or a company similarly situated would be willing to sell the patents for, which is far from being a basis for forming an opinion as to the market value of these patents.

We further move to strike out his testimony upon the ground that the testimony is based, according to the witness' statement, upon the situation as it existed in 1913, six years before this sale was made here in the United States, and that it is based upon the condition as it existed in Germany, and not in the United States; that the witness has stated that he did not have information as to the conditions in 1919 in the United States and has testified that he was not in the United States at any time prior to 1922.

Upon all those grounds, we move that his testimony as to the value of these patents be stricken from the record.

THE COURT: That concludes your statement?

MR. KRESEL: Yes.

THE COURT: May I ask this, Mr. Kresel: was the valuation of $17,000,000 the witness' value for all the patents in suit or only the value for a particular group?

MR. KRESEL: Only for the 58 Haber patents; and he subsequently changed that valuation to $20,000,000.

THE COURT: I recall distinctly his answer to your questions in cross-examination with respect to how he ascertained or how he arrived at the value of $17,000,000 and $20,000,000 for this particular group. I do not recall his testimony, if there was any, in cross-examination as to how he arrived at the value of patents other than the group which he appraised at $17,000,000.

MR. KRESEL: I did not, upon cross-examination, ask him specifically about any other patents. But I did ask him to tell us what he meant or understood by "fair market value."

THE COURT: As to all patents?

MR. KRESEL: As to all patents.

MR. ANDERSON: I did not understand his answer to be what you stated, Mr. Kresel. I could not hear it.

MR. KRESEL: He distinctly stated that what he meant was that that was the value which his company would have been willing to pay for these patents or his company would have been willing to sell them for.

THE WITNESS: No, not this. That is a misapprehension. I stated——

MR. KRESEL: No, Mr. Witness, please; you are through.

THE COURT: Will you take a seat?

MR. ANDERSON: I can recall him.

THE COURT: Unless you want to recall him, will you take a seat behind your counsel.

MR. ANDERSON: If he made the statement that his market value was solely what they would sell, what they were willing to sell for, which I did not hear—I was over here and could not hear and came over here for that reason—then I would like to have him recalled on that question, because I did not know it, I am frank to say.

THE COURT: You may recall him.

MR. KRESEL: If there is any doubt as to what the witness said on this subject, you can refer to the record.

MR. ANDERSON: I do not want to go over the record. I will just recall him.

THE COURT: Do not make your questions leading under these circumstances.

MR. ANDERSON: No, I will not.

KARL HOLDERMANN, recalled for further examination, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. ANDERSON:

Q. 552. On cross-examination it appears in the record that you stated, in speaking of market value that you understood market value to be what the owner would sell for, or words to that effect. Will you please state whether there were any elements in arriving at the value of these patents other than the

value at which you thought the owner could afford to sell?

MR. ANDERSON: Is that leading?

MR. KRESEL: I submit, your Honor, that that ought not to be the question.

MR. ANDERSON: I did not want to lead. I did not even want to indicate what the answer was.

MR. KRESEL: Of course, you did not. But that does not meet the testimony that he has already given. His testimony was distinctly this. I asked him what he meant by market value, and he said that he meant by "market value" what the owner of a patent would be willing to sell it for.

THE WITNESS: That is wrong.

MR. ANDERSON: One minute. Don't you interrupt.

THE COURT: Don't you say a word until you are asked a question. You are not in this discussion.

THE WITNESS: Excuse me.

MR. KRESEL: I think that the question which is now propounded to the witness is not calculated to meet that testimony because the question is whether there was anything else in the witness's mind. Do I get the question right, Colonel?

MR. ANDERSON: As constituting market value, yes; what were the elements that he considered in taking market value. You undertook to define as I understand, market value. That is a question of law. It is not a question of the witness' opinion.

THE COURT: If the witness put his appraisement upon one theory, which is an erroneous theory——

MR. ANDERSON: The valuation or market value goes out, and you would only consider his testi-

mony on other facts to reach a conclusion. I want to ask him then if he considered any other elements, or what elements he considered.

THE COURT: I think your question should not be put, Colonel Anderson, in the form it is now in. It should be more general, and if you want to ask him generally again, so far as I am concerned, in the absence of objection by Mr. Kresel, who may or may not make an objection, I should be very glad to take it.

Q. 553. I will ask you, then, this question: this morning I asked you to tell me what, in your opinion, was the fair market value of these patents. I will ask you now to state to the Court how you arrived at the fair market value of those patents?

MR. KRESEL: I doubt, your Honor, whether even that is the question. We have already upon cross-examination and upon direct——

THE COURT: I am wondering whether the mistake is not in recalling this witness, because he did testify in chief and he testified very fully and clearly on cross-examination what elements he considered in arriving at this valuation.

MR. ANDERSON: I think so. I will let him stand aside, because his opinion may be one thing or another. As long as he has given those elements in arriving at his conclusion, his opinion of market value may be one thing or another, but the elements are the thing that controls.

THE COURT: And the record discloses those elements?

MR. ANDERSON: The record discloses those elements very fully; and, therefore, in order not to delay your Honor, I do not want to go over the same ground. He has given the various elements.

(Witness excused.)

MR. KRESEL: Your Honor understands, I hope,

that the motion is directed alike to each group of the three groups of patents that the witness undertook to testify as to the value of.

THE COURT: My difficulty with that, Mr. Kresel, is this. I have a clear recollection of the $17,000,000 group. I have a clear impression with respect to that group. I do not as to the others.

MR. KRESEL: May I refresh your Honor's recollection?

THE COURT: Yes.

MR. KRESEL: The witness testified, as to the Haber patents, that the value was $17,000,000, and then he raised it to $20,000,000. He testified as to the tanning patents that they were worth $300,000. As to the dye patents, he was not asked and did not give any value. I do not know why the Colonel did not ask him.

MR. ANDERSON: He gave an earning value of $1,500,000.

MR. KRESEL: No, you are mistaken. He gave no value. You did not ask him, and he did not give any testimony as to the value of the dye patents. Of course, I was not going to ask him. But I want to be frank with your Honor. Your Honor asked me what the situation was and that is the situation.

MR. CHOATE, JR.: He gave the earnings in marks, the total profits in marks for 1913, as 1,367,668 marks.

MR. KRESEL: He was not asked to assign any value for these patents.

MR. ANDERSON: I am perfectly willing to stand on that.

THE COURT: Then the grounds of your objection, apart from his being put upon the stand as an expert and then having been shown to have

a strong and moving and active interest in the outcome of this suit, raise a question of law with which I am not familiar. I am not familiar with the principle you stated a moment ago, that an expert may not have any interest in the suit. As I understood you, such interest, if it appears, disqualifies the witness as an expert and does not go to the weight of his testimony. I am not disputing that principle. I am simply unfamiliar with it either way.

MR. KRESEL: May I make a suggestion, your Honor, that you reserve decision on this motion until we return here for the trial?

THE COURT: Yes, I am going to.

MR. KRESEL: And by that time we will take the liberty of submitting to your Honor some authorities on the proposition.

MR. ANDERSON: That raises a question, if your Honor pleases, if Mr. Kresel has concluded, in connection with various motions that have been made in this case. Counsel in their answer include a motion to dismiss the bill for want of equity. That goes, of course, to the whole case, like a demurrer. We have filed a motion to strike out a considerable part of their defense, which, if stricken out, would have excluded what has gone in today as immaterial and irrelevant, for the reasons stated in the motion.

THE COURT: You mean it would have excluded matters that have gone in today?

MR. ANDERSON: Much of what has gone in today on their cross-examination would have been excluded, in my opinion, if that motion were sustained; because counsel referred in a number of cases to their affirmative defense, and this motion goes to that defense, to strike that out.

There also is a formal motion to amend by

striking a sentence or more out of the bill which is largely a legal conclusion. That is a matter of form.

In addition to the motion to dismiss the bill for want of equity, there is a motion to strike out the charges of conspiracy in the bill.

Those motions, if your Honor please, of course, all go practically to the foundations of this case and certainly they go very largely to the character and scope of the testimony. It would be an enormous waste, and, of course, improvident for us to have to summon a large number of witnesses, or for the defendant to summon a large number of witnesses here to deal with questions which your Honor may conclude to strike out.

Therefore, we moved the Court recently, or rather gave notice of a motion, that we would ask the Court to hear argument on the motions, to call them up and dispose of them a week or ten days possibly in advance of the trial, and in that way so clear the ground as to enable us to summon our witnesses with reference to the disposition of the matter finally and limit the evidence in accordance with your Honor's rulings; and we now renew the motions.

MR. GUTHRIE: It seems to us that these motions ought to be disposed of when the case is opened fully to the Court. It would simply double the labor of the Court and counsel. The answer has been filed now for seven months. The trial will go on in a little over three weeks, and it seems to us that these motions, which it has been candidly stated go to the very fundamentals of the suit, ought to be disposed of after the case is fully opened by both sides in all its aspects.

We are confident that it will be imposing upon

your Honor, as it will be imposing upon counsel, double labor, to come here and interrupt the preparation of this very important case to argue these motions, when we are profoundly convinced that your Honor would not dispose of them until you had considered the whole case.

THE COURT: Your thought, then, Mr. Guthrie, is that at the beginning of the suit, on June 4, after the case is started, that these motions will come on for argument and they need not be followed by a ruling but by the taking of the testimony, and these motions decided and the case decided on its merits, if it reaches that, at the same time; so that all the questions can go up to the Court of Appeals or the Supreme Court, or wherever it may go, with the whole record before it.

MR. GUTHRIE: I think that will be the ultimate result even if we argued the case a week before and divided it up. I think the suggestion involves great duplication of labor and unnecessary labor. Practically everything contained, in our judgment, in our affirmative defenses would have to be gone into in answer to the plaintiff's case.

They charge conspiracy. They charge, by implication, a fraud. It is absolutely necessary to show the situation which made the action of the President of the United States in the public interest. They allege that there was a suppression of facts from the President and from the President's representative, the Assistant Secretary of State. So that, in our judgment, it would be simply duplicating the labor of the Court, as it certainly would be duplicating the labor of counsel.

We are entitled, I think, to urge upon your Honor's consideration that our answer was filed seven months ago, and that this motion should

have been made promptly and not delayed until the eve of the trial.

I think as to the witnesses, the same witnesses will have to be called in any event, so far as we are concerned, if you strike out the part of our affirmative defense regarding the condition of the United States and the facts bearing upon the judgment of the President in authorizing and directing this sale.

As to our defense that it would be inequitable because there cannot be now a complete decision. So far as we are concerned, all the witnesses would have to be called even if this defense should be stricken out.

We are convinced that the same is true of the plaintiff's case unless the bill is going to be fundamentally amended and all charges of fraud, or suppression, of conspiracy, restraint of trade, and conspiracy to deceive the President of the United States are to be eliminated from the bill and the case rest on the simple, naked charge that the patents were sold for less than what the Government conceives to have been their market value.

I therefore submit that the ends of justice and the convenience of Court and counsel would be served by following the course suggested by your Honor; and after there has been a full opening on both sides, if counsel then want to press their motion to strike out any part of their answer, that can be argued; and also your Honor might want us to argue then the motion to dismiss the bill for want of equity. But in this important case it is highly probable that if these motions were argued, you would reserve decision and call upon the parties for their proofs.

THE COURT: I shall not defer the taking of proofs whatever happens, Mr. Guthrie. That is,

whether we hear the arguments before or after, the evidence will go on on June 4th. That is, the suit will begin for the taking of testimony, too, with or without the decision on those motions, immediately on the closing of the arguments, without awaiting a decision; unless a decision is so patent that there is no possibility of error by a decision from the Bench.

MR. KRESEL: That is our understanding.

THE COURT: Because the case has been set for hearing. As to that, I am clear that the taking of the testimony in this case of witnesses must not be deferred.

MR. ANDERSON: I understood that to be the case, sir. But of course, a motion to dismiss a bill for want of equity is a demurrer, and you cannot in ordinary practice go into a hearing on the merits of long weeks of taking evidence, with a demurrer pending undisposed of. It must be disposed of, I think, one way or the other; and while, by agreement, we could go ahead and take the testimony and hear the whole case, we think that these motions and also the motion to strike out, which is practically a motion to limit the evidence in this case—and that is very important because it comes up right at the beginning—should be ruled on. Your Honor will have to rule on it one way or another. Why not rule on it in advance?

I quite agree with distinguished counsel for the defendant that wherever you can consolidate the action and argument, to save time, it should always be done. I should very much prefer it myself, but it seems to me these questions have got to be disposed of preliminarily.

The reason we have not made this motion before is that counsel himself has been out of the

country during practically the entire spring, and illness in the family of one of the other counsel has made it imposible to take any proceeding in the last four months without inconveniencing counsel; and therefore we have waited until counsel could be heard. The case was continued on their motion so that the matter of this discussion could come up. I think these motions should be disposed of, but whatever your Honor rules, of course, will be satisfactory.

THE COURT: My difficulty is this, Colonel Anderson. I agree with you that if there are any motions the decisions of which would limit the evidence, would narrow the issues, of course, it would be well and wise and practicable to have those disposed of beforehand. But it seems to me that we have gotten so near to the trial of the case that, I will assume, I might err in a decision, and suppose I decided to strike it out or not to strike it out, it might prejudice the whole case. Suppose I should strike out some of the affirmative defense and then the case should be heard on the narrowed issues and should go to the Court of Appeals, and the Court of Appeals said there was error in striking out that defense, it would have to come back for re-trial for the taking of that testimony. Suppose I should reach a conclusion that the demurrer is sound.

MR. ANDERSON: I would want your Honor to sustain it at once and we could go right up.

THE COURT: So that I will not set the motions for argument until the fourth day of June. I will hear you that day.

MR. ANDERSON: If your Honor please, I want to make it quite clear that a number of times we wanted to make these motions, but we could not do it in the absence of counsel.

THE COURT: We will hear you on the 4th of June, and we will do the best we can with the motions at that time. If we can decide them offhand, possibly we will.

MR. ANDERSON: The only one that is important is the demurer. I hope your Honor will sustain it, if you think it is good.

THE COURT: Now, then, with respect to Mr. Kresel's motion, may I get you both to help me on this point? How can the testimony with respect to value of patents, when sold to Americans or to American organizations be ascertained by a witness who tells me what the value of these patents would be to a German organization which cannot buy?

If you assume that testimony to be based on a royalty basis, that is one thing. But we are not working on a royalty basis. I am having difficulty in seeing how it is practical to apply this testimony to this situation. I am not asking for argument. I am only asking for you both to help me on that because it seems to me that we are trying to find out about something in this spot, and I am told that a certain condition exists over here, and there is no way to link them up as far as I can see. That is my very serious difficulty, and I will ask you to help me as much as you can on that, because it seems to me that it is not pertinent to the issue here.

MR. ANDERSON: I will, at the proper time, attempt to give you argument on that. I understand your Honor's position as you have indicated it during the trial; and unless I can convince your Honor that the evidence when taken on the record, so that we can examine it, is properly connected with this subject, or sufficiently connected with it to make it at least admissible, why, of course, I

assume that your Honor will strike it out, we will take an exception and the question will be disposed of. I am not going to make an elaborate argument on it.

THE COURT: No. I only called it to your attention here so that in the memorandum that you file on this motion, you will not overlook that particular phase of it.

MR. ANDERSON: That particular question. I understand, sir. Your Honor indicated it this morning.

THE COURT: June 4, at what time shall we say?

MR. HERSHKOPF: You said 10 o'clock. Do you mean Eastern Standard time or daylight saving?

MR. MAHAFFY: I think the order fixes 9 o'clock, Eastern Standard time.

THE COURT: Very well, 9 o'clock, Eastern Standard time.

(Whereupon an adjournment was taken until Monday, June 4, 1923, at 9 o'clock, Eastern Standard time.)

DEFENDANT'S PROOFS.

Wilmington, Delaware,
June 28th, 1923, at 8:30 o'clock a. m.
Standard Time.

Before:
HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. KRESEL: If your Honor please, before I call a witness I think it is proper that I should state to your Honor the reasons which have impelled us not to move, your Honor, for a dismissal of this bill of complaint.

To begin with, there is doubt as to whether the Court could entertain such a motion without the defendant resting. Were this the ordinary case, I should have no hesitancy to rest the defendant's rights upon the showing that the plaintiff in this case has made. Without meaning in any way to disparage the efforts of counsel that have represented the Government in this suit, I say in my opinion as a lawyer the Government has utterly failed to sustain its contentions in any respect whatsoever. And so, if this were the ordinary case, whether it were a case before a jury or before a Court, I should not hesitate to submit it upon the record as it stands.

But we conceive this to be an extraordinary case. The defendant in this case is in possession of property which in its opinion is property that is being held in a trust relation. This defendant,

from our point of view, is a quasi-public agency and corporation; and when such a defendant is attacked and its motives are called into question, its duty is perfectly plain, and that is, whether the attack is well founded or ill founded, to leave no opportunity go by without making a complete disclosure and a complete defense. And it is that reason that has impelled us to make it certain that before this case is submitted to your Honor, these gentlemen, whose actions here have been called into question, should have the opportunity to take the witness stand here and under oath tell your Honor what they have done and why they have done it.

On the other hand, your Honor, I trust that I have made it perfectly plain that by going into a defense the defendant does not waive the fundamental principle which it has contended for, namely, that the question here involved is a non-justiciable question, that the Court can not and will not seek to substitute its judgment for the judgment of the Executive Department of the Government in a matter which was committed to its discretion by an act of Congress.

With that explanation, your Honor, I call Mr. A. Mitchell Palmer as our first witness.

MR. ANDERSON: Will your Honor permit me, in view of the somewhat unusual statement of counsel on the record, to say just a word in reply from our point of view. I recognize the right of counsel to make a motion, to make any motion as to which he is advised in the interest of his client to make. I recognize his entire right not to make any motion, if he sees fit. And I recognize that counsel's opinion may be of value, and I do not doubt that he holds the opinion, frankly. Not-

withstanding that, in view of the unusual expression by counsel of his opinion as to what has been accomplished in this case, I do not think it would be fair to the Government to have that statement without the statement on the part of the Government that while we recognize and it is hardly necessary to say that when counsel enter upon a defense of a case, they do not waive any of their positions in the law, but rather seek to sustain their positions, and while I recognize also the weight of the consideration upon counsel of a desire for a full exposition of any facts in connection with the case, and the Government at the outset of this case declared its desire to the same end—indeed I think the Government has gone beyond the usual practice in putting in evidence, in stepping over the usual strict limitations confining itself to evidence that might be helpful to itself, to the end that the full facts may go in. But with all that, since counsel has expressed his opinion, I think it is fair to say that the Government feels and will argue in this case that it has established every claim that it made in this case and introduced evidence under every paragraph except one as to which reservation was made yesterday; and, in the second place, that upon the law of this case the Government is entitled to a decree.

If counsel want to test that question at this stage we are glad to do it; if not, we are very glad to have the defense go in fully, and prefer it, to the end that all sides may be fully heard. But I have always taken the position in this case that it is a question of law and this case might properly be disposed of upon the bill and answer but for its peculiar character requiring, as we view it, an exposition of the facts.

A. MITCHELL PALMER.

A. MITCHELL PALMER, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Your name is A. Mitchell Palmer?

A. That is right.

Q. 2. And your residence is where?

A. Stroudsburg, Pennsylvania.

Q. 3. You are by profession a lawyer?

A. A lawyer.

Q. 4. Did you hold the office of Alien Property Custodian?

A. I did.

Q. 5. Do you remember when you were appointed to that office?

A. I was appointed late in October. I think my commission was dated October 22, 1917.

Q. 6. And prior to your appointment of Alien Property Custodian, had you held any other public office?

A. Yes, I had.

Q. 7. Will you state what office you did hold?

A. I had been a member of Congress from 1909 to 1915 and was, at the time of my appointment as Alien Property Custodian, Chairman of the Pennsylvania District Board under the Selective Service Act.

Q. 8. How long did you remain in the office of Alien Property Custodian?

A. From October 22, 1917, to March 4th, or possibly March 5, 1919.

Q. 9. Were you then appointed to a public office?

A. On March 5th, I qualified as Attorney General of the United States.

Q. 10. And for how long a period did you continue as Attorney General of the United States?

A. Until March 4, 1921.

Q. 11. The office of Alien Property Custodian was created by an Act of Congress?

A. It was provided for in the Trading with the Enemy Act, so-called.

Q. 12. Prior to the enactment of that legislation, was there any such office as Alien Property Custodian?

A. There never had been such an office in the history of the world.

MR. ANDERSON: I do not know that that is material, but the distinguished witness is an able lawyer and I will ask him to confine his answer to responses to the question. It is a rather broad answer to say there never was such an office in the history of the world. The true evidence of that would be the Statutes, and so forth. I am not going to object to getting the preliminary examination in, but at this time I think it would be well to suggest that the questions be limited to direct answers to the question.

MR. KRESEL: You think I should put in the Statutes of the world.

MR. ANDERSON: No, sir, I am not interested in anything outside of this Statute.

MR. KRESEL: I have no objection to striking out the remark.

THE COURT: There is no motion to that effect.

A. The answer is no.

Q. 13. At all events, when you took office in October, 1917, did you organize this office?

A. Yes.

Q. 14. Will you, in a general way, please state how you organized it; what bureaus you established; how you sought to administer this office?

MR. KRESEL: That is simply preliminary, Colonel.

MR. ANDERSON: I am not going to object at present, unless it goes too far.

A. We built an organization, so far as we could foresee, of a kind that would provide for all the various duties of the Alien Property Custodian under the Trading with the Enemy Act, conceiving that the Alien Property Custodian could not possibly perform all the duties that were laid upon him by the act, in person, but that he had to build an institution for that purpose.

The Act provided, for instance, that after investigation the President might determine that property was enemy-owned and by demand take it over, and that power was delegated to the Alien Property Custodian.

MR. ANDERSON: If your Honor please, I am very reluctant to interrupt a witness; but I think that possibly it would be better if counsel should direct his questions to specific points. Statements such as the witness is making and explanations such as he is making necessarily involve statements of law, statements of powers, things of that kind, which are not proper subjects for testimony; and I think, if I may suggest, that it will save me the necessity of objecting, as I am not going to be particularly technical, and will also facilitate matters if it could be possible to ask for the specific facts which counsel desire.

MR. KRESEL: I shall do that as far as it is possible; but in these preliminary matters it is not possible to ask specific questions. I shall no doubt direct the witness's attention specifically to points as we go along. I think, Colonel, you will find that there is nothing that he will say that will be detrimental to your interests in this respect.

Q. 14. (continuing). Will you proceed, Mr. Palmer?

A. So we divided the organization into several bureaus, putting at the head of each a chief of the bureau, and the bureau in every case expanded as the business of the office grew. They were, first, a Bureau of Administration, which was really a chief clerk's office having to do with the personnel and operation of the Alien Property Custodian's office as a department of the Government; a Bureau of Investigation, charged with the duty of passing upon all reports on enemy property which were received, and is a preliminary way for the custodian's attention deciding as to whether it was enemy property, and also charged with the duty of investigating all questions of alleged enemy ownership of property in order to determine the facts. Of that bureau I made Mr. Francis P. Garvan, of New York, the chief.

MR. ANDERSON: May I ask if there was any written order creating this bureau?

MR. KRESEL: I am going to inquire.

MR. ANDERSON: If so, I think it should be produced.

Q. 15. Was there a written appointment?

A. I do not think so.

MR. ANDERSON: I mean the written orders creating this organization, because the written orders would be the best evidence of what was the organization.

MR. KRESEL: Not necessarily, Colonel. It is not the sort of a thing I need prove by documentary evidence when I have the man who had the power and did the act.

MR. ANDERSON: If he gave orders, the orders are the best evidence.

A. (continued). I doubt very much if there was any written order. You understand, when I started

this work I had no precedent to go by. The City of Washington was crowded with war workers. I was shoved off into a little back room behind a tailor shop, with nothing to begin work with except a lead pencil and a colored messenger at the door, and I had to work fast and build rapidly, and we did a great many things by oral orders which in normal times we possibly would do in the usual, careful and routine method of Government departments.

Q. 16. You have spoken of the Administration Department and the Bureau of Investigation. What other departments did you build up?

A. Then we created a bureau for the purpose of managing all the properties which came into our possession pursuant to our demands, and we called that, after some discussion, the Bureau of Trusts, and of that I made Ralph Stone, who was then president of the Detroit Trust Company, of Detroit, Michigan, the chief.

We had also a Bureau of Audits, charged with the duty of directing all the auditing of the office and all the auditing of enemy concerns and enemy properties which we took over, of which I made Haskins & Sells, certified public accountants, the chief, who acted through Mr. Homer A. Dunn, a member of their firm. I think possibly at the very beginning that work was done by Ross Brothers, Lybrand and Montgomery. Mr. Dunn soon succeeded them.

We had also a Bureau of Law, which, as its name implies, was composed of attorneys whose duty it was to advise all the other bureaus with respect to their legal rights, powers and duties. Of that bureau, after a little while, Mr. Lee C. Bradley, of Birmingham, Alabama, became chief.

We had also a Bureau of Sales, created after the so-called Sales Amendment of March, 1918, of which Joseph S. Guffy, of Pittsburgh, formerly general

manager of the Philadelphia Company, was the chief.

That was the skeleton of the organization. The way the business flowed through the office was about in that order. Under the Act all persons having enemy property in their possession or owing money to an enemy person were required to make written reports to the Alien Property Custodian.

My first act almost was to give public notice that these reports must be filed within a certain period. I think I named thirty days. I extended that time from time to time until as I recall it the last day for filing reports under the law was December 20th.

Q. 17. 1917?

A. 1917. After our forms had gone out and our notices had been given wide publicity, the reports came in in a perfect torrent until I had received before Christmas something like 35,000 separate reports. Those reports were all examined by the Bureau of Investigation, whose people worked for weeks, day and night, in three shifts, twenty-four hours a day, to get through them; and it was only after they had passed them and sorted out the duplicates and that sort of thing, that the demands for the property were issued.

Q. 18. May I stop you there a minute, Mr. Palmer. You spoke of reports and now you have spoken of demands. Did you adopt forms on which such reports were being made?

A. Yes.

Q. 19. And as to demands, did you adopt forms of demands?

A. Yes.

Q. 20. You had to adopt those yourself? I mean, you had no precedents, or anything of that sort?

A. We had to prepare and adopt them, both.

Q. 21. Did you want to say anything further when I interrupted you?

A. I was going on to describe, if I understood your question properly, how the business flowed through the office; that is all.

Q. 22. Yes, please go right on.

A. After these reports were gone over by the Bureau of Investigation, if it was determined by my subordinates that it was enemy property, demands for the property were prepared for my signature. I signed the demands and they were served; and when the property came in, it was taken charge of by that division in the so-called Bureau of Trusts which had to do with that particular kind of property.

There were a large number of divisions in that bureau. They continued to manage it and to operate it, to see that depositaries were appointed for the funds and income received and properly credited and deposited in the Treasury of the United States, under the advice of the Bureau of Law, which had a man assigned to each one of these divisions as its special counsel, and acting constantly in conjunction with the Bureau of Audits, who were directed to make any examinations of these properties that the divisions in the Trust Bureau saw fit to require.

Q. 23. In addition to the Bureau of Investigation in your own office, which was under the immediate direction of Mr. Garvan, did you avail yourself of other information from governmental agencies as to the enemy property?

A. Yes.

Q. 24. Prior to the amendment of the Trading with the Enemy Act that was passed in March, 1918, had you as Alien Property Custodian received information with reference to the extent of German property in the United States?

A. Yes.

Q. 25. I wish you would state as briefly as you can what information came to you in your official ca-

pacity with reference to the extent and character of German holdings in the United States?

MR. ANDERSON: May it please the Court, I understand of course that all this evidence is taken subject to the general objection. I have not made it yet, I overlooked it for the time. Therefore, I wish now to put upon the record the fact that the plaintiff objects to all evidence of this witness heretofore taken, and, to the end that the objection may be made in form, moves to strike out the same as immaterial and irrelevant to the issues in this case, and for the further reasons stated in my opening statement to the Court, which I will not repeat in view of the method under which we are proceeding, and in the various discussions before the Court which have taken place as appear on this record.

For convenience I will ask that counsel agree and the Court consent that this objection may be taken as applying to every question and every answer and, if the same be admitted by the Court, that an exception be awarded the plaintiff thereon, saving the necessity for its constant renewal. Is that satisfactory, Mr. Kresel?

MR. KRESEL: Yes, sir.

MR. ANDERSON: Then with that understanding I will avoid objections as far as possible during the examination of the witness unless some specific reason comes up.

As to the particular question, I feel constrained to object on the ground that it is too indefinite and calls for information of such voluminous character if answered in accordance with its terms, that it would be equivalent to a complete history of the work of the Alien Property Custodian, which I assume cannot be relevant to this issue.

I will have to ask that counsel make his questions specific as to the information which he desires, to the end that I may make such objections thereto as may be necessary. I cannot object to a question of this kind specifically, for the reason that some of the information as to which the witness is asked might be relevant to this case and some might not.

In the next place I wish to specifically object upon the ground already indicated in the argument, that any evidence in this case as to the activities of the Germans prior to our entrance into the war—which, as I have already pointed out, have been tried and settled in a higher forum, and as to which I can join in condemnation equal to that of counsel for the defendant—cannot be material to this case. That has been argued and I am not going to do more than state it.

I do not know whether I have made my objections very clear, but I hope they are clear enough for your Honor to understand the position of the plaintiff, to the end that we may avoid repetition. But as to this specific question I must object on account of its generality and indefiniteness, and must respectfully ask that counsel put his questions specifically to the end that there may be specific answers, that I may be able to object to the question and also prevent evidence going in which would be not responsive to a proper question.

Mr. Kresel: I shall endeavor, if your Honor please, in my examination of this witness, in so far as possible to put specific questions to elicit specific answers. These matters that I am now inquiring about are preliminary matters having to do with the organization and the operation of

the office of Alien Property Custodian in the early days.

THE COURT: The purpose being to give a setting for the specific acts here in question?

MR. KRESEL: Exactly; and, as your Honor will notice from the question, I am tending toward the time when the March 28, 1918, amendment to the Trading with the Enemy Act was before Congress. We all realize the importance of that particular amendment.

I do not agree with Colonel Anderson that the operation of the Alien Property Custodian's office is immaterial in this case. On the contrary, I think it is of great materiality, and while it is not my purpose to burden this record with a complete history of the operation of that office, did I think it was necessary for the protection of the interests of this defendant to place before the Court a complete history of the operation of that office, I should have no hesitation to argue before your Honor that we would be entitled to do that.

My present question is directed to showing by this witness what information he had before him in his official capacity as to the extent and character of the German property in the United States. I shall follow that by inquiring as to what he had done in managing that property between the time that he took office and the time that the March amendment was presented to Congress; because it is my purpose to show that whereas one policy was being pursued by the Government under the Act as it was originally enacted, namely, that of having the Alien Property Custodian simply conserve the property, the amendment of March, 1918, made a complete change in the policy of the Government for the treatment of this property.

MR. ANDERSON: May I reply very briefly, sir. The question that counsel has asked for calls for a complete statement of the information of the witness prior to March 28, 1918.

MR. KRESEL: A statement as to the kind and character of property?

MR. ANDERSON: Yes. The witness has said that prior to the thirty-first day of December, I think, some 35,000 different properties or trusts were reported to him. If the question were answered in accordance with the terms of it, it would be necessary for him to tell about the entire 35,000. There is one trust involved here. I could not object to the question specifically or to have the answer of the witness go out as not responsive to the question for the reason that the witness could, with great ability, and I do not doubt with great interest to us all, as a matter of historical knowledge, speak from now until adjournment time this afternon, in response to that question, and never go outside of the limits of the question.

Of course, while I recognize that this witness, being a distinguished lawyer, will not even avail himself of such a large opening to make a speech of that kind or go outside of what he concedes to be relevant to the question, yet, in the defense of the interests which I represent here, I must ask for a more specific opportunity to limit this evidence and I therefore object to the question very earnestly.

In the next place, the policy of Congress in this matter is, I presume, to be taken from the Acts of Congress. What the witness may have known about the German property can have no bearing upon the situation, as I see it, or what his knowledge may have been on the subject, be-

cause, while he had been a leading member of that body, he had, of course, resigned when he became Alien Property Custodian.

For all those considerations, I think it is very essential, or I would not make this objection, that we be given the opportunity which was given the other side. If your Honor will recall, your Honor held me quite strictly—and I do not say that with the slightest suggestion of criticism—in the examination of witnesses for the plaintiff here to specific questions, many of them being objected to on account of being too general. I recognized that the technical objection was good in many cases and required the witnesses to confine themselves very strictly in their responses. Now, I must respectfully ask that the same rule—as I know your Honor will—be applied to this evidence, no matter who the witness is or what the conditions are.

MR. KRESEL: I am certainly not asking the Court to apply any different rule.

MR. ANDERSON: I did not mean that you were. I simply say that that rule was followed.

MR. KRESEL: I do not think it was necessary to call attention to that. I press my question. I think I am entitled to have it answered in the form I have put it.

THE COURT: May I be told what the question is?

(Q. 25 repeated as recorded above.)

MR. KRESEL: I have limited it, as your Honor will see, simply to the character and the extent of the holdings.

THE COURT: Now, then, as to its materiality. With respect to a few questions asked by the Governor, I have expressed my views. At times, I did not. At no time did I rule upon the materi-

ality or relevancy or pertinency of the testimony. All questions and all facts that the Government desired to put in, it was invited to put in, prior to its formal close.

I have no desire or purpose or intent to apply a different rule in any particular to the testimony offered by the defendant than to that offered by the Government.

So far as the specific question is concerned, if my view of it is correct, namely, that its purpose is merely to furnish a background or setting from which the acts here specifically in question may be more intelligently understood, I take it that the question is not objectionable. But if the purpose of the question is to call forth from this witness a prolonged, detailed statement of facts which will do more than furnish a setting for the transaction herein complained of, I take it that it is objectionable and I think it proper, therefore, that counsel for the defendant should at this time so modify or amend the question now put to this witness as to indicate the scope, as well as the character of the information now called for.

Q. 26. Mr. Palmer, I wish you would state what information you had as Alien Property Custodian as a result of the operations of your office between October, 1917, and March, 1918, with reference to the amount of property German-owned in the United States?

Mr. Anderson: Same objection, sir; and in addition, I think he is asking this witness for information derived from the operations of his office, which is an extremely general source of information and might call for the most indefinite hearsay, newspaper clippings and everything else, because he stated he kept them; and I ought to be able to test, at least, whether it is his own knowl-

edge or coming from newspapers and things of that kind.

THE COURT: I want to add to what I said with respect to the previous question that I take it, Colonel Anderson, you do not deny that where the terms of a Statute of Congress, as well as a contract, are open to different interpretations or constructions, that interpretation or construction may be aided by the surrounding circumstances and facts, namely, the situation which it was intended to remedy or relieve.

MR. ANDERSON: I do not deny, if your Honor please, the general principle of law which your Honor has stated. Of course, it is well recognized. But I do state that in this case, as to this particular statute, it has no application because the language of the statute is perfectly clear. I want to say, however, that your Honor may not misunderstand me, that while I object to it as immaterial and irrelevant, I recognize under your Honor's ruling in this case that that would probably be overruled, provided the question was properly limited and specifically expressed.

THE COURT: I thought I probably had not made clear the reason for stating that I was willing to hear the facts which constituted the background or setting, which probably did not indicate my true meaning. The question is what?

(Q. 26 repeated as above recorded.)

MR. ANDERSON: I would like to add one further objection, if your Honor would allow me: that all this information is already in the record in the form of an official report from this witness.

THE COURT: Is that report in as a disclosure and statement of facts; or is it in merely as a report?

MR. ANDERSON: I understood counsel to intro-

duce it as an official report of the Government. What its value is as evidence, I am frank to say I do not know.

MR. KRESEL: May I answer that question, your Honor?

THE COURT: Yes.

MR. KRESEL: If the report which Colonel Anderson refers to is the chemical section of the report of Mr. Palmer to the President in February, 1919, then I direct attention to the fact that that portion of the report was introduced by the Government as its evidence, and I quite agree with Colonel Anderson that that report is in evidence, speaks for itself, and is proof of the facts therein contained, and that the Government is bound thereby beyond any question. But that is no reason why I cannot have this witness answer the particular question that is now pending.

MR. ANDERSON: The counsel introduced the entire report, if your Honor will remember, and also the chemical section was included as an exhibit in the answer in this case by the stipulation that was introduced by both sides.

THE COURT: Are you willing, then, to concede now, in order that there may be no question about it in the future, that the report introduced as Defendant's Exhibit No. 30, being report of Mr. Palmer, as Alien Property Custodian, to the President, and by him submitted to Congress, shall be taken as evidence of all facts therein stated? Is that agreed upon by counsel?

MR. KRESEL: I did not know whether the question was directed to me or to Colonel Anderson.

THE COURT: The question is directed to each of you.

MR. KRESEL: Of course, in so far as we put in

that report we put it in as proof of the facts therein contained, and certainly the Government must take that position with reference to the section of the report that it introduced.

THE COURT: What I am trying to get is whether it is conceded on both sides that not the chemical section only of the report, but the entire report may be looked at by the Court in considering this case as evidence of the truth of the facts therein stated, or must it be viewed merely as a statement of the situation contained in the report and submitted to Congress, and as not evidence of the truth of those statements?

MR. KRESEL: May I say to your Honor, I have already answered the question directly as far as the defendant is concerned. May I state further, with all due deference to your Honor, that the question is not open for decision by counsel. The authorities are to the effect not only that official reports are proof of the facts therein contained, subject, of course, to be disproved by the opposing side, but where, as in this case, the Government itself places in evidence the whole or a portion of an official report, the Government is bound thereby, not only to the extent that it shows that a report was made containing certain statements of fact, but is bound by it as proof of the facts as though they had called a witness who had under oath testified to those facts. There is no question about—I say there is no question; my reading of the authorities has convinced me that that is a question that is beyond any doubt.

THE COURT: I thought possibly counsel might be able to agree upon this, so that that question could be behind us for all time.

MR. KRESEL: So far as we are concerned, we answer your Honor's question in the affirmative

immediately, namely, that we feel that the proof of the report is proof of the facts and the truth thereof. We have not yet heard from counsel for the Government.

THE COURT: Do you question that statement?

MR. ANDERSON: That it is proof of the facts and the truth thereof?

THE COURT: Yes.

MR. ANDERSON: I am perfectly willing to have those reports considered to be proof of the facts to the same extent as if testified to by a witness. I am not objecting to that, but the legal effect of it I do not concede as counsel has stated.

THE COURT: Then, if we cannot agree to that, may we have the question?

(Q. 26 was repeated as follows):

"Q. 26. Mr. Palmer, I wish you would state what information you had as Alien Property Custodian as a result of the operations of your office between October, 1917, and March, 1918, with reference to the amount of German-owned property in the United States?"

MR. ANDERSON: I have one point, your Honor, which I do not think I made clear. Assuming that what your Honor has said would apply in this case, that the prior facts and circumstances would be considered as a construction of this act, which I, of course, do not concede, what Mr. Palmer may have known is a matter of not the slightest consequence so far as that is concerned (I do not mean that is any suggestion that Mr. Palmer's knowledge was not important in connection with this whole matter); but as to what Congress did, the only thing that Congress could be affected by would be matters that were actually within its knowledge officially, and it is rather difficult to prove what those facts are, I should imagine; but

the question calls for the knowledge of this witness, and as he was not a member of Congress, I cannot see that it would have any relation to it.

THE COURT: As now advised, I do not see the pertinency of this question. I do not see that it is subject to any other objection than that of irrelevancy. So the answer to it may be taken under the general rule, if counsel so desire.

Q. 26. (Continued.) Will you answer, please?

A. The reports which I have mentioned and which were filed during that period, all of which were voluntary reports, made under the law, disclosed enemy-owned property in this country aggregating more than five hundred million dollars in value, according to the appraisals which we had made, property located in practically every—well, you asked only as to the amount.

In addition to that, there was a large body of enemy-owned property whose ownership was at that time undisclosed, but as to whose enemy ownership we had knowledge from various official sources.

We had at our command all of the Secret Service and Intelligence Agencies of the Government in every department, who were under instructions to send to us all information which came to them relative to enemy-owned property in the United States, including the War Trade Intelligence, the War Department Intelligence, the Naval Intelligence, the Bureau of Investigation of the Department of Justice, the Treasury Secret Service; and we had, in addition to that, reports in writing constantly from the Secret Service and Intelligence Bureaus of all the allied countries, who were constantly sending to us through their diplomatic representatives and otherwise, all the information they had relative to the ownership of German property in this country.

In addition to that, we had at our command all

of the wireless messages which had been transmitted across the sea between Germany and the United States for a very considerable time immediately preceding the war, running into tens of thousands of messages, concerning which I employed a large force of persons to decode and translate and pick out of the messages those which referred to transfers of German property made in this country by their owners in Germany for the purpose of avoiding the consequences of a state of belligerency between the two countries. Based upon that information at that time, not disclosed by reports from the persons having the property in charge, but from these various agencies, there were in addition to the five hundred millions of property possibly a couple of hundred millions more, most of which we afterwards got.

Q. 27. We will come to that. We have now spoken of the extent of the German holdings here in amount. Will you please very briefly indicate the industries in which you found such German holdings?

MR. ANDERSON: Same objection.

A. The German investment in this country was in a wide variety of industries and in a wide variety of commercial and financial operations, extending into practically every State in the Union, in Porto Rico, the Virgin Islands, Panama, Hawaii, Alaska and the Philippines.

They had large interests in textile manufacturing, chiefly in New Jersey. They had large interests in metal concerns in New England and Philadelphia. They were raising rice and tobacco and sugar in the South and in Hawaii and in the Philippines. They had large interests in some railroads in this country. They were in the cement business, in the banking business, in the manufacture of ship valves, of machinery of various kinds, especially the so-called inside transpor-

tation machinery; they were in chemicals, dyestuffs and pharmaceuticals.

They made—oh, pretty nearly everything. I used to say "from candy to lead pencils." I think the first concern we took was a lead pencil factory.

Q. 28. You took over as Alien Property Custodian such concerns as you determined to be German-owned. Did you operate them if they were going businesses? I am speaking now only of the period prior to March, 1918, you understand.

A. Yes. If the German interest in the American business was stock in an American corporation owning the business, I demanded and took over the stock. If that stock was a controlling interest in the company, I ousted the Board of Directors and elected directors representing the new stockholder, namely, the A. P. C. If it was a minority interest only in the company, I demanded and always received representation on the Board of Directors proportionate to the ownership of the A. P. C. in the stock. In that way, through my stockholders whom I was appointing, I operated all these American businesses enemy-owned.

Q. 29. And, speaking generally, prior to March, 1918, were the operations of such concerns profitable?

A. They were highly profitable.

Q. 30. Was there any special reason therefor?

MR. ANDERSON: If your Honor please, I object.

MR. KRESEL: I withdraw that.

Q. 31. Did you, prior to March, 1918, as Alien Property Custodian sell any enemy-owned property?

A. It seems to me I sold a little, some commodities; that might be to prevent waste. I am not certain when that was, but we made some early sales of commodities.

Q. 32. In other words, under the act as originally

enacted, you, as Alien Property Custodian, made sales of enemy-owned property in your possession only when necessary to prevent waste?

MR. ANDERSON: If your Honor please, I object.

THE COURT: I think the objection is well taken, to the form of the question.

MR. KRESEL: There was no answer to it, your Honor, so I will reframe the question.

Q. 33. Did you make any sales of enemy-owned property prior to the amendment of March, 1918, except in cases where it was necessary to prevent waste?

MR. ANDERSON: I object also to that.

THE COURT: I think the question is still open to the same objection.

Q. 34. Prior to the amendment of the act in March, 1918, did you sell any enemy-owned property in your possession that was not perishable?

A. No.

MR. ANDERSON: I object to that, on the ground that the question whether it was perishable is a conclusion. The law is perfectly clear in this case, and one man may think a thing is perishable and another may not.

THE COURT: Who, in your judgment, Colonel Anderson, was to determine that? Was that a justiciable question that had to be determined by the courts before it could be acted on by the Alien Property Custodian?

MR. ANDERSON: I think that this witness can state, and subject to my general objections I do not object to his stating, what property he sold, which is a matter of record, and therefore, the best evidence is the record evidence. I think he can state or it can be shown here what property was sold and the character of that property and then the question of the construction of the law, which,

of course, the witness is getting at, can be taken up by the Court. But if we are going into the sales of property, he can only show the fact that he sold certain property and the character of that property; and the best evidence of that is the record of the sales, and I object to any other evidence. If we are going into that question, let us get it right.

MR. KRESEL: I think, your Honor, the question was answered before Colonel Anderson made his objection. I may be mistaken. Of course, if it was, it may be stricken out for the purpose of your Honor considering it.

THE COURT: The question now is what?

(Q. 34 repeated as above recorded.)

THE COURT: I think the objection to that is well taken. You may take the answer under the general rule, if you want to.

MR. KRESEL: Will you answer the question, please?

A. No, I did not.

Q. 35. There was an amendment to the Trading with the Enemy Act pending before Congress in March, 1918. Did you in your official capacity have anything to do with proposing that amendment?

A. I prepared it, and under the direction of the President, submitted it to the Congress.

MR. ANDERSON: If your Honor please, what the witness did in his official capacity I will have to object to, and I move to strike out the reference to the direction of the President upon the ground that it is not responsive to the question. He was asked whether he had anything to do with the passage of that amendment in his official capacity. The only people who could pass that amendment was Congress; and if he had anything to do with it, assuming that the evidence is admissible at all,

which, of course, we do not admit, then he can state what he did. But he cannot go back into directions of other peole and what they communicated to him.

MR. KRESEL: Colonel Anderson forgets the form of the question. I did not ask this witness what he had to do with the passing of the amendment. I asked him whether he had anything to do with proposing the amendment.

MR. ANDERSON: He can state what he did, but the question of who directed him or how he was directed is not within the question.

MR. KRESEL: I consent to strike out the words "Under the direction of the President." I will bring that out by specific question .

THE COURT: Is the question as now amended objected to, Colonel Anderson?

MR. ANDERSON: Only the general objection, sir.

THE COURT: You may proceed, Mr. Kresel.

Q. 36. Prior to your proposing this amendment, did you have a conference about it with the President of the United States?

A. I did.

MR. ANDERSON: That is objected to.

THE COURT: Your general objection?

MR. ANDERSON: Yes, the general objection and I think the question is subject to further objection that if there were any written communications on this subject, they must be produced. But I do not know that the question quite called for that.

MR. KRESEL: The question has been answered, your Honor.

Q. 37. Please state your best recollection of the conference that you had with the President of the United States with reference to this proposed amendment to the Trading with the Enemy Act, giving the

date as near as you can of the conference. Do not answer until Colonel Anderson has an opportunity to object.

MR. ANDERSON: If your Honor please, in addition to my objection as to its immateriality and irrelevancy and the further objection as to matters relating to the Act of Congress, which we claim is perfectly clear, I want to add the further objection that the Constitution of the United States provides the manner by which the President may communicate to Congress his wishes.

Unless such communication was made to Congress, it is of no materiality in this case, even assuming that it would be in that event, because what this witness may have known and what the President may have said to him or he may have said to the President, I take it, is a matter of no importance—assuming that that question can be gone into at all in this connection.

In the third place, if there was any communication of the wishes of the President to Congress, it must be addressed to Congress in a constitutional manner to have any effect upon Congress or to have the force of a communication by the President. If, therefore, it is intended to connect up the President with the passage of this Act, I respectfully suggest that the only means by which that can be done would be by producing the message or communication from the President to Congress.

I think that is of very great importance as a precedent. If we are going to inquire into the relations between Congress and the President, other than those official relations expressed in the message, I think we are going into a very broad field and a very dangerous field.

Your Honor may suggest and perhaps coun-

sel may suggest that the Government has in this case entered upon the inquiry as to the communications to the President, but they have only been as to the statement of facts upon which the President predicated the exercise of his discretion, and not beyond that.

As to the communications between the President and Congress, I think that they can only be inquired into, if at all, to the extent of official communications; and whatever the President may have said to this gentleman or whatever he may have said to the President is certainly immaterial here and I conceive that it has no possible bearing upon the case and I do not think it would be a proper subject of inquiry.

Mr. Kresel: Colonel Anderson entirely misconceives the purpose for which I am seeking to elicit this testimony. I am not seeking to elicit the fact that the President sent any message to Congress by Mr. Palmer. It is not the law that such messages must be in a certain way, even if I were trying to prove that. But that is immaterial.

What I am trying to show is that this officer who, according to the Trading with the Enemy Act, must at all times be acting under the direction and control of the President, reported the results of his investigations and what the administration of his office up to that time had taught him to the President, who was responsible for the administration of this Act, and discussed with him the necessity of having the Act amended.

What Congress did I shall show in a minute, but I am not seeking this information upon the theory that the President was, by means of Mr. Palmer, sending any message to Congress. I claim I have a right to show what information was con-

veyed to the President and what instructions were given by the President to Mr. Palmer.

THE COURT: The charge of the bill of complaint in this case and the position of the plaintiff in this case is that the President of the United States was misinformed, misled, and in effect deceived with respect to the facts. It seems to me that under such allegations and charges the inquiry of the defendant, with respect to facts within the President's knowledge, should not be restricted to the particular facts but that it should be open to the defendant to show, if it so desires, the full nature and scope of the information with respect to the alien property that was within the knowledge of the President of the United States at any time prior to the execution by him of the orders of December 3d and subsequent orders.

I think the objection to this question is not well taken and you may take the answer.

MR. ANDERSON: Your Honor will allow an exception, of course.

THE COURT: An exception to all adverse rulings throughout the case will be understood to be reserved by either party.

MR. KRESEL: Mr. Palmer, will you proceed.

A. The date of the conference I cannot give exactly, but it was early in the month of March, 1918, immediately after the President had directly submitted to a committee of the Senate a proposed amendment to the Trading with the Enemy Act.

MR. ANDERSON: If your Honor please, that is certainly not responsive to the question.

MR. KRESEL: He is just fixing the time.

THE COURT: I understand that he is fixing the time and not attempting to prove the facts. It is simply an attempt on the part of the witness to fix the precise time, and has no other purpose, so

that it may be checked up by subsequent evidence in this case.

MR. KRESEL: That is the entire purpose.

MR. ANDERSON: Then I take it that counsel concedes that the submitting of any amendments by the President is not evidence of the facts stated therein, but merely for the purpose of connecting up this interview.

MR. KRESEL: What is that?

MR. ANDERSON: The statement by the witness that the President submitted to the Senate some paper or some recommendation, which, of course, was in writing, is not to be taken as evidence of that fact, because if he is going to testify what he submitted to the Senate in the way of an amendment, I want to see it.

MR. KRESEL: Colonel Anderson, I will say now that this mention by Mr. Palmer of the fact that the President had submitted to Congress something is not to be binding on you. It was mentioned simply to fix the time of this conference. Is that satisfactory?

THE COURT: You may complete your answer, Mr. Palmer.

A. (continuing) And I told the President that I had observed that he had sent down a proposed amendment to the Trading with the Enemy Act giving him the power——

MR. ANDERSON: That is in writing, is it not?

MR. KRESEL: This is the conversation he is telling now. Hasn't he a right to tell the conversation?

THE COURT: I understand the nature of your objection, Colonel Anderson. I will let you state it at length after Mr. Palmer has finished. I think it is not well taken. I think Mr. Palmer is relating conversation with the President and not

attempting to give primary evidence of written documents.

A. (continuing) ——to take over the Hamburg-American Line and North German Lloyd Line docks and terminals at New York and that it seemed to me that it was the proper time, in connection with that amendment, to have the Congress carry in the same appropriation bill, as that amendment was being proposed to the appropriation bill as a rider, another amendment which would give to the Alien Property Custodian the full and unrestricted power of sale of enemy property.

He called my attention to the fact that I had issued, immediately after becoming Alien Property Custodian, a public statement which I had submitted to him and which he had criticized and corrected; the statement finally going out in the form entirely approved by him, which statement had been to the effect——

MR. ANDERSON: As to that statement, I would like to have it produced.

MR. KRESEL: May this witness finish his answer, then Colonel Anderson make any suggestion?

MR. ANDERSON: But I must interrupt for the purpose of making an objection.

THE COURT: You are now identifying the statement to which he called your attention in this conversation?

THE WITNESS: I am detailing my conversation with the President, in which we recalled to each other what that statement was at the beginning.

THE COURT: Then you may proceed.

A. (continued) ——that the Alien Property Custodian was a mere conservator of these enemy properties, that the properties were being taken over by the Government, and would be managed and operated by

the Alien Property Custodian solely or chiefly because of the fact that their owners were under a disability growing out of the war conditions to provide for their own property, and giving assurance to the country that the property of Germans resident in the United States would not be touched, and that sales or transfers were not contemplated.

I told him that we were both agreed at the time that that statement was issued that that was not only what the act meant, but that is what our policy ought to be and would be, and that it had been my policy up to that time. And he then wanted to know what has caused me to desire a change in that policy or suggest a change in that policy. I told him that we had found out a great many things about German property since I had been in office, that no one had ever known or suspected before. I told him that, speaking in a broad and general way, the German property in the country naturally fell into two classes, in the one class was the private investment of the individual German subject in this country, who was led to invest his savings, generally in small amounts, in mortgages or other property in the United States, because he was satisfied that the opportunity for profitable returns upon his investment here was great, without any other thought than simply making a safe investment; that those investments constituted the majority in number of German holdings here but only a very small minority or a very small portion of the total amount; that the second and larger class, and far more important class of German investment in this country, my investigations had shown me to consist of investments made in more or less large amounts in commercial and industrial concerns in the United States, very frequently key industries of great importance, by interests in Germany of the same kind that we generally understood at that

time to be behind the war, the so-called junker class, and in many cases, my information was financed and actively supported and aided by the great German financial institutions; that many of these concerns were closely affiliated with all the powers that be in Germany, members of the royal family itself having made investments over here of a peculiar and interesting nature which I described to him, and that we had become convinced, I told him, that all this investment was in a sense hostile to American interests as a part of the deliberate plan of Germany to conquer the world by trade—it was an invasion of American commercial and industrial fields purely for the German benefit.

I told him that in addition to that I had found many of these industrial concerns, in fact most of them, were manned by Germans, frequently not naturalized citizens, sometimes naturalized; that we had run into cases where managers of these plants had been naturalized under written instructions from the Germany owners, in order to be more effective in their work; that many of them were even then what I called spy centers, filled with German propagandists and all of them would be sedition centers if they were allowed to continue in their present way.

I cited some instances. For instance, the German-American Lumber Company I recall as one example, a concern worth several million dollars, located in Florida on Pensacola Bay, in which a member of the royal house of Germany was a chief stockholder. He had never seen the property, he had never taken anything out of it, he had continued to increase his investment until his concern owned every advantageous place on the finest harbor in the Gulf of Mexico, the nearest harbor on American soil to the Panama Canal. When we took that plant, instead of finding its files filled with interesting and important data with reference to the lumber business, as we expected, we found

it was a mere storage place for Pan-German literature, a distribution center for propaganda in this country.

I called his attention to the fact that we had discovered other properties which were being similarly used, going into some detail. He asked me why I thought that even that was sufficient justification for changing our program and selling these properties instead of simply continuing to conserve them. I told him that my observation had been that practically all of these great properties that I was managing were profitable, most of them were profitable due entirely to war conditions, they were engaged in the manufacture of articles necessary for the war or whose price had been largely enhanced by the war conditions, and that it seemed to me, as I hoped it would seem to him and to the Congress, an absolutely unmoral proposition that the Government of the United States should at its own expense be carefully operating these great properties and making tremendous money, which would presumably be returned to their stockholders eventually, out of the very war for which the stockholders and their other friends in Germany were responsible.

It offended my sense of decency and justice, and I said I thought we would be doing all we would have to do if at the end of the war we made an accounting for the value of the properties as the Germans left them and as we took them over, rather than for the enhanced and tremendously increased values growing out of our management of the war and out of the war itself.

For instance, over in New Jersey the great textile mills were engaged in making millions and millions of dollars worth of army cloth, and practically all of them were making their money out of the war. Not only that, I told him, was I convinced was a good reason why we should convert these properties into money, but it seemed to me that the time had come when we had sensed the German program in its desire to conquer the

world, that what it was most anxious to do was to capture all the markets of the world and strengthen its foothold everywhere, and especially was that true of America, where it hoped to increase its commercial and industrial hold, that we could, it seemed to me, strike no more effective blow as a war measure than to do that which would give notice to Germany and to the powerful financial and industrial industries behind the Kaiser in the war, that no matter how many armies they might defeat, or how many French cities they might destroy, or how many countries in Europe they might overrun, one thing was gone, and their war had been lost on the American battle front, that they had separated from themselves forever all of these tremendously valuable properties in the United States which were, in their mind, the gateway, the entrance to a great expansion of German control of industry and commerce in the United States.

I told him from what I had been able to learn that was a matter of vital concern to Germany, what we were going to do with respect to these properties was being very seriously considered over there, and that the time had come right then in my judgment to strike a highly effective blow in the war. I called his attention to the fact that it was a time when every nation in the world was getting together every weapon it could lay its hands on to swat the Germans with, if I may use that term. It was the darkest hour of the war.

I referred to the fact of the conditions on the war front, with which, of course, he was entirely familiar, and we discussed them. It was about the time that General Haig had said that Great Britain was fighting with its back to the wall. I told him of the recent statement that Mr. Baker had made to me and to others.

Q. 38. Secretary Baker?

A. The Secretary of War—who, on returning from the front, told a party of twenty men at the house of

Mr. Hugh Wallace, who were gathered there for the purpose of listening to him, the very day he got back, that it was the general opinion of leaders of the allied forces in Europe, and it was his opinion that Paris was about to fall, and that the Channel ports would be turned. Although that was serious, he said he thought it was not fatal; but to the rest of us men of the Administration gathered there it sounded fatal. At any rate, it brought gloom to every countenance and distressed every heart.

That was the time when it was generally believed that things were at their very lowest. I asked the President to let me go down to the Congress and ask the Congress to hit the Germans where it would hurt, to strike a blow from which they knew they could never recover, and let them know right now, as an act of war, that we proposed to Americanize this property which they had.

He said he had come to the conclusion that that was the correct view to take of the situation; that his idea in asking for this amendment with reference to the Hamburg-American Line docks and the North German Lloyd Line terminals was that it would put into the Treasury a certain amount of money representing their value, put the title to the properties in the United States, so that when the United States finally got to the Peace Conference, it could be said that the matter of the sale was a closed incident, the money was in the Treasury, and they would negotiate with reference to the disposition of that, but they would not even consider the question of ever returning the docks and the terminals. He wanted to be in that position.

And with the understanding between us that the policy was to be changed in respect to these industrial and commercial and important properties in the United States, and that the private investment of the

individual German subject was to be left intact, so that if we wanted to, it might be returned in kind, I submitted to him the amendment which I proposed to the act. He acquiesced in it. He asked me to go down and submit it to the Congress and urge its passage.

Q. 39. Did you submit the amendment?

A. I did.

MR. ANDERSON: One minute, please. If your Honor please, I want to move to strike out this very interesting statement of the witness for the reasons already stated; for the further reason that much of it relates to matters in no way referring to this act, such as the Hamburg-American terminals, conversations with other persons and the President of the United States, statements of other persons which are purely hearsay and not evidence; but I will make objection to the end that I may reserve the point for future consideration, and that is, that in view of the fact that the President of the United States, and, as I take it, an ex-President of the United States, cannot be summoned into this court to testify, either under law or propriety, that a conversation with him is not evidence.

THE COURT: Colonel Anderson, I have been puzzled by this throughout. Will you help me? Then, is it possible to charge a President of the United States with ignorance, and by that charge convict him of it without an opportunity for denial?

MR. ANDERSON: No, sir.

THE COURT: Then, how would it be denied?

MR. ANDERSON: It would be denied in this way: that you could not in any proceeding, in my judgment, since you cannot call the President of the United States into a court, and, in my judgment, you could not call an ex-President to testify

as to any matter that occurred while he was President——

THE COURT: I think there is no doubt about that, Colonel Anderson.

MR. ANDERSON: If you could do it, you would not do it.

THE COURT: That does not call for an opinion. I think it cannot be done.

MR. ANDERSON: And, therefore, the only thing that could be produced in the event that the condition became such that it was necessary to show that the President was not informed, or was misled, would be written evidence of that fact, and the conclusions would have to be drawn from that written evidence or documents, and, of course, all the surrounding conditions.

I would suggest, and, therefore, present for the consideration of the Court that conversations with the President of the United States are not, in any event, admissible. And I will say in that connection that but for the fact that we took the position that Mr. Polk was acting in a purely personal capacity and entirely outside of any authority of the President of the United States, as a matter of law, I should not have called Mr. Polk into court. I hope I have made myself clear.

THE COURT: Entirely clear.

MR. ANDERSON: And I may be unsound on it. I recognize that since the Burr case, so far as I know, the question has never arisen, and it is such a delicate question that I discuss it with great hesitancy; but I feel it my duty to raise the question.

MR. KRESEL: The question has arisen as to the power of the Court to summon the President into court. That is settled law.

MR. ANDERSON: No, I do not mean that. I

mean the question of matters concerning the President.

MR. KRESEL: And that question likewise has been discussed by the cases.

MR. ANDERSON: I do not recall it for the moment.

MR. KRESEL: The cases have uniformly held, as Mr. Guthrie in his argument pointed out to the Court, that the courts would decline to entertain jurisdiction of matters which the Executive had determined upon, which were, in his discretion, in the exercise of his authority.

MR. ANDERSON: That raises our entire argument, if your Honor please.

THE COURT: My difficulty with that, Colonel Anderson, is that it seems to me that a person who is subjected to a charge before a court, in any event should not be charged without the opportunity of a defence. It seems to me that the inevitable conclusion to be drawn from your contention and logic is that the only thing necessary to do to convict a President of the United States of acting without justification, without warrant, in ignorance, and by guess, is an allegation in a bill to that effect.

There is still doubt in my mind as to the power of the Judicial Department of the United States to review any act that is within the presidential discretion, assuming power to exist. I believe, notwithstanding my opinion, that a President or ex-President of the United States may not be summoned into a court to defend his acts, that when charged with an improper act, whether by the United States or not, there is no avenue or no character of evidence that has evidential value that may not be used under such circum-

stances to show that he did not so act. The motion to strike is denied.

(At this point a short recess was taken by direction of the Court.)

MR. ANDERSON: Will your Honor permit me. Your Honor made one statement which, I think, was inadvertent in the language used, but which might place myself and the plaintiff in a position which I have tried to avoid in this case, and that is, you said the President was charged with certain acts. I do not think the bill in this case, or any language which I have used in court, is capable of an interpretation that any charge has been made against the President of the United States in any way. It certainly has not been so intended. But the President, of course, is human, and in the manifold duties of his office, or any other officer, including this Court, might be misled as to the facts; and if such were the case, it might affect the legal effect of his action, just as this Court might be misled as to facts and would be subject to review or re-hearing before the Court. It is only in that sense that the President's name is used at all, and great care has been used not to even suggest that the President even knew of the matters which we claim affect this case.

THE COURT: I thank you very much for correcting any misstatement or any inference that might be a wrongful interpretation of the plaintiff's position in this case. But I was under the impression, Colonel Anderson, that the bill did charge——

MR. KRESEL: May I read it, your Honor?

THE COURT: I should be glad to have you.

MR. KRESEL: I read from the thirty-fifth paragraph of the bill:

"That the facts hereinbefore set forth and other facts necessary and essential in relation to said seizure and proposed and pretended sale of said patents, copyrights and other rights, and rights arising out of or incident thereto, sought to be confirmed and validated or authorized by said Executive order, were not disclosed to the President at the time of or before the signing of said Executive order and that the same was signed and issued upon an entire misunderstanding or mistake of facts which, if the same had been truly stated and known to the President, would have prevented his signing or issuing the said order; that said Executive order was not authorized by law, and that the same was and is for the reasons aforesaid and for other reasons, without force and effect to authorize, confirm, or validate the pretended sale or disposition of said patents, copyrights and other rights and rights arising out of or relating thereto, sought to be confirmed, validated and authorized by said Executive order."

THE COURT: Thank you very much, Mr. Kresel. It does charge a misunderstanding. I understand you fully, Colonel Anderson. I think the record fully and amply discloses that you charge no improper motives on the part of Mr. Palmer or any other Government officials, but that the bill does charge a misunderstanding.

I will, however, state an impression that I am gathering, and I will get you to answer it at a later time and not now, because I want to proceed with this testimony. I have not read Mr. Palmer's report at all. I have not had it in my hands. I know its contents only by what has been read to me and stated to me at the bar. But I am wondering, if it makes a full disclosure of the state

and condition of the alien property, particularly of the facts with relation to the chemical industry—and I have understood from such reading that it does—how there is actual fraud involved—I must use the legal term, because I have got to use it sooner or later and I might as well use it now—and if there is actual fraud involved, whether the grossest fraud, if fraud existed, is not upon the governmental officials who acted with knowledge rather than upon the representatives of the several companies that were engaged in the manufacture or sale of dyes and chemicals? For, in the one case, that is, the Government officials, it seems to me that probably they acted with full knowledge, and in so acting, they acted in breach of trust, while the representatives of the dye and chemical industry only attempted to have them so act.

I am afraid I have stated that rather crudely and in such a way as to indicate that I have an opinion with respect thereto, while, as a matter of fact, I have only tried to indicate that my impression now is that if the Government succeeds in establishing fraud in this case and a full disclosure of the facts before the Government officials acted, the inevitable conclusion of the Government's contention would be that the grossest fraud would be on the governmental officials rather than on the persons engaged in the industry.

I will hear you at any time after this morning that you desire to be heard on that.

MR. ANDERSON: I will be glad to reply to your Honor's suggestion whenever it suits your Honor, but I do not care to do it now. I think I get your Honor's idea, and when I take it up, if I do not develop it, your Honor will make it clear.

THE WITNESS: I would like to explain that while, as I said, I had the interview with the President before the amendment was submitted, he and I discussed the matter upon other occasions up to the very time the bill was signed which carried the amendment into law, and what I have here said as to the conversation between us may not all have happened the first time. That is what I wanted to say.

Q. 40. When this amendment which we talk of here, Mr. Palmer, in the case as the March, 1918, amendment, was before the committees of Congress, did you appear and testify before the Senate Committee that had charge of the bill-

A. I did.

Q. 41. That was the sub-committee of the Committee on Appropriations of the United States Senate?

A. Yes, sir.

MR. KRESEL: Without stopping, your Honor please, to read any portion thereof, I offer in evidence the official report of the testimony of Mr. Palmer before that committee, which was delivered by him on March 7, 1918.

THE COURT: The same committee before which Mr. Bradley's statement was made?

MR. KRESEL: No, your Honor; Mr. Bradley's statement was with reference to an entirely different amendment. That was the amendment of November, 1918.

THE COURT: Yes, and this is of March.

MR. KRESEL: March, 1918.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 31." (*See Exhibits, Vol. IV, page 2228.*)

Q. 42. Mr. Palmer, when the amendment was orig-

inally presented to Congress do you recall whether it contained what now appears therein namely, the provision with reference to sales at public auction, the provision with reference to the exception which says that the sales were to be at public auction unless the President, in the public interest, stating his reasons therefor, should otherwise direct? Do I make myself plain as to that?

MR. ANDERSON: I object in addition to the general grounds stated that if there was any such amendment presented to Congress it was in writing, and that is the best evidence of what it contains. I would like to see it.

THE COURT: Does not your inquiry call for the bill as presented rather than the recollection of the witness with respect thereto?

MR. KRESEL: Your Honor, I do not happen to have before me the bill as presented; and, of course, this witness has not a copy, he is no longer in possession of the record. I will put in a copy of the bill as originally presented, and with that promise is there any objection to my proceeding?

MR. ANDERSON: Not at all, it being understood it is merely leading up to that.

MR. KRESEL: Yes.

THE COURT: All right, you may answer the question, then.

A. No, it was not in the original amendment.

MR. KRESEL: I now offer in evidence a resume of extracts from the proceedings before Congress, showing the history of the amendment, how it was originally proposed, how it was amended on the floor of the Senate, and how it was subsequently amended in conference between committees of the Senate and the House.

THE COURT: Taken from what, Mr. Kresel?

MR. KRESEL: Taken from the Congressional Record.

MR. ANDERSON: In addition to the objection made, I will have to call for the production of the original record; because there must have been a good deal of discussion on that subject, and I do not think a resume of that discussion would be fair to the plaintiff here if this evidence is going to be considered at all. We must know what Congress considered.

THE COURT: Are these extracts copies or restatements?

MR. KRESEL: No, sir; they are copies from the records.

THE COURT: Then is Colonel Anderson's objection to the fact that those extracts are taken from the Congressional Record, or is the objection that those extracts are not all of them matters pertaining to the same matter?

MR. KRESEL: I understand the objection to be that it is not all pertaining to the matter. The same rule applies to Colonel Anderson as applied to me. He may put in anything else he pleases.

MR. ANDERSON: Very good. Has counsel the record here?

MR. KRESEL: We will produce it, yes. We have not the record here in court; we have been using copies.

MR. ANDERSON: If counsel can produce the record, as we have not it here, to the end that we may use it in cross-examination or to the end that we may put in other parts of it at the appropriate time on rebuttal——

MR. KRESEL: Certainly.

MR. ANDERSON: I will not raise the question of primary and secondary proof, because we are proceeding under an agreement.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 32." *(See Exhibits, Vol. IV, page 2263.)*

MR. KRESEL: I will direct your Honor's attention to but two paragraphs of this in the Congressional Record of the Sixty-fifth Congress, bound volume, page 3328, under date of March 11, 1918. It appears that while this bill was before the Senate, on the floor of the Senate, Senator Frelinghuysen offered the following amendment, which was adopted by the Senate, namely, to add to the bill as it was then before the Senate the following sentence: "And provided, further, That any property, other than that sold to the United States, sold under this act shall be sold at public auction to citizens of the United States only and to the highest bidder."

I also read from bound volume page 3942 of the Congressional Record an extract showing that after the disagreement between the House and Senate, the bill having been refererd to conference, the Conference Report made to the Senate, which was Senate Document 204, shows that this phrase was added to the bill in conference, namely, "unless the President, stating the reasons therefor, in the public interest shall otherwise determine."

THE COURT: Where was that added?

MR. KRESEL: In conference.

THE COURT: In conference?

MR. KRESEL: Yes, your Honor. On the same day, that is March 23, 1918, when the Conference Report was presented there was debate on the bill in the Senate, and Senator Gallinger directed his remarks with reference to these amendments, and he said:

"Did I understand the reading of the conference report correctly, that, notwithstanding the provision is for public sale, the President may order the property sold otherwise? If so, I should like to know why that provision is modified to that extent?"

And Mr. Underwood, who had the bill in charge, made this reply: "I was coming to that. The only modification in that respect is that it does not leave everything to the Alien Property Custodian. The proposed change is 'when the President shall "determine,"' not 'prescribe.' As I understand, when we provide that the President shall 'prescribe,' he may make rules and regulations, but the change here is that 'when the President shall determine,' which will require the personal act of the President. That change has been made because there may be conditions arise in the disposition of this property where it would be impossible to sell it at public auction without it possibly going into the hands or control of alien enemies or persons who are unfriendly. The committee of conference thought that was wise and that it was within the line of the original bill as it passed the Senate, because when the alien property act originally passed the Senate there was no limitation whatever. Now, this merely gives the right to the Alien Property Custodian in an exceptional case to appeal to the President to allow a certain portion of such property to be sold not by public auction but by negotiation. Then the President must indicate in writing why he has done so. I think the situation is thoroughly guarded from the standpoint of the Senator from New Hampshire."

The same volume of the Congressional Record shows that the Conference Report was not voted on on that day, and that on March 23, 1918, the Conference Report No. 405 was made in the House, and that there was debate in the House on the matter March 26, 1918, and that the Conference Report was finally adopted on March 26, 1918.

MR. ANDERSON: May I state in regard to Exhibit No. 32 that I do not object to the paper as introduced, but I would like to have it understood that the parts underscored are not to be printed in italics.

MR. KRESEL: No, of course, not.

MR. ANDERSON: Because I have known that to be done, and it has caused a great deal of confusion. I once had to make up an entire record over on that account.

THE COURT: It will be so understood.

MR. KRESEL: I now offer in evidence the following Executive orders issued by the President, dealing with the carrying out of the Trading with the Enemy Act.

MR. ANDERSON: Are they in that book?

MR. KRESEL: Yes.

MR. ANDERSON: We agreed that either side could use it.

MR. KRESEL: No; not these particular Executive orders. What we agreed was that the Executive orders with reference to sales could be used; but I now propose to put in specific Executive orders issued by the President with reference to the administration of the act. Some of them I think you did put in, but these you did not.

MR. ANDERSON: There is no objection to any of them. The only question was whether we had agreed according to the record.

THE COURT: My recollection corresponds with yours, Colonel Anderson, that anything in that booklet might be read by either party at any time.

MR. ANDERSON: And if it will save time, we agree to it now.

MR. KRESEL: May I, then, simply indicate on the record that I desire specifically to have in evidence the following Executive orders, to wit: The Executive order of February 26, 1918; the Executive order of April 2, 1918; the Executive order of July 15, 1918; the Executive order of July 16, 1918; all of which are printed in this booklet which contains Plaintiff's Exihbit No. 1, and is entitled "Trading with the Enemy Act."

MR. ANDERSON: Now we agree, sir, that they may be used upon the trial, re-trial or argument of this case on appeal; with the same effect as if they were in evidence, without being printed in the record.

THE COURT: And subject to all the objections.

MR. ANDERSON: And in accordance with the same stipulation that we made before covering this subject.

Q. 43. With reference to the Executive order of July 15, 1918, Mr. Palmer, did you write to the President this letter, dated July 11th, of which I show you a copy?

A. I did.

MR. KRESEL: I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 33." *(See Exhibits, Vol. IV, page 2272.)*

Q. 44. With reference to the Executive order that was made by the President under date of July 16, 1918, did you write a letter to the President under date of July 11th, a copy of which I now show you?

A. I did.

MR. KRESEL: I offer that in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 34." *(See Exhibits, Vol. IV, page 2272.)*

MR. KRESEL: I desire to read this, your honor. (Reading.)

Q. 45. Mr. Palmer, with reference to the gentlemen who constituted the Advisory Sales Committee, statement has been made here by me that they were appointed by the President. Will you state what the fact is about that?

MR. ANDERSON: Same objection.

A. There were no appointments in writing, but the President asked me to convey to them his requests that they should serve the Alien Property Custodian in that capacity.

Q. 46. And did you convey that?

A. I did.

Q. 47. And did the gentlemen accept the appointment?

A. They all accepted.

MR. KRESEL: I also desire to offer in evidence a statement by Senator Underwood on the floor of the Senate, made March 11, 1918, at a time when this March, 1918, amendment was before the Senate, the statement being found at page 3593 of the unbound Congressional Record under date of March 11, 1918.

MR. ANDERSON: That is, of course, subject to all objections.

THE COURT: I understand nothing is being offered on either side that is not subject to objection and exception.

MR. KRESEL: I enclose the portion that I refer to within blue pencil marks.

Received in evidence and marked "Defendant's Exhibit No. 35." *(See Exhibits, Vol. IV, page 2273.)*

Q. 48. Subsequent to the passage of the March, 1918, amendment and these Executive orders issued by the President and the organization of your sales force, did you sell a large amount of German-owned property?

A. I did.

Q. 49. In connection with your program of selling, was the question of German-owned patents brought to your attention?

A. It was.

Q. 50. How? I mean in what connection your attention was first directed to that feature of the administration of alien property?

A. One of the first properties that my sales organization had ready to sell—and it was a considerable chore to get these properties in shape to be sold—was the Bosch Magneto Company, and my attention was immediately called to the fact, when we began to consider advertising that property for sale, that a very important part of its assets was the right to do business under certain patents, which, however, did not belong to the Bosch Magneto Company, but the title to which seemed to be in the name of Robert Bosch, of Stuttgart, Germany, the same person who held the title to nearly all of the stock of the Bosch Magneto Company, who had been permitting the Bosch Magneto Company, an American corporation, to use his patents. We saw immediately that if we expected to get a purchaser for the Bosch Magneto stock we would have to find some way to dispose of the patents at the same time to the same purchaser.

Q. 51. While that particular piece of property brought the patent question pointedly before you, were there other enemy properties under your care in

which the patent situation was similar to that in the Bosch Magneto case?

A. There were quite a large number of such properties, and we learned of it very early in our consideration of the sales program.

Q. 52. Could you, as nearly as possible, tell us approximately the date when this matter was brought to your attention with reference to foreign patents being tied up with property in your care as Alien Property Custodian?

A. Well, I would say, early in the summer of 1918.

Q. 53. Up to that time, Mr. Palmer, had you sold any German-owned patents?

A. No.

Q. 54. Using as an example the Bosch Magneto Company, when the question of sale arose, was the question of whether the patents would pass with the property raised by anybody?

MR. ANDERSON: Mr. Kresel, couldn't you make it not quite so suggestive?

MR. KRESEL: I do not like the use of the word "suggestive."

MR. ANDERSON: I could use the word "leading" but the suggestion of the use of the word "leading" with this witness is not appropriate.

MR. KRESEL: I was certainly not attempting to lead the witness. I was trying to make my questions as general as I could.

THE COURT: I think I have expressed my view on several occasions in this case about leading questions. In the case of certain witnesses, I think leading questions are not harmful. Will you reframe your question, Mr. Kresel, or do you insist upon it as it is?

MR. KRESEL: I will reframe it if Colonel Anderson thinks it is not quite right.

Q. 55. What I am inquiring about, Mr. Palmer, is how this question of foreign-owned patents was brought to your attention? In other words, was it brought to your attention by your organization or by outsiders, or by both?

A. Well, I would say by both. I know that persons who were considering the purchase of these enemy properties—and there were many persons all over the country examining into all the properties that our sales organization was having in hand—raised the question as to how we were going to handle it.

Q. 56. That is what I tried to bring out. Did you then proceed to seize German patents?

A. No; I did not. Proceed to seize? Well, no, I didn't.

Q. 57. Was there any question of your right to seize such patents involved?

MR. ANDERSON: Do you mean was such a question raised, or was there a question of law?

MR. KRESEL: Was there such a question raised?

MR. ANDERSON: I have respect for the witness' opinion. If it is a fact, I do not object; but if it is a question of law, I do.

A. There was a very strong difference of opinion as to whether patents were property under the Trading with the Enemy Act and might be demanded and taken over by the Alien Property Custodian. I was of one opinion, and other authorities, and controlling authorities, were of another.

Q. 58. It is alleged here by the Government that your opinion was that you had no right to seize enemy patents. Is that a fact?

A. On the contrary, I believed from the beginning that under the Trading with the Enemy Act I had the right to demand and take and receive enemy-owned

patents. That was my opinion, and I urged it very strongly.

Q. 59. In that connection did you have patent counsel in your office?

A. Yes.

Q. 60. Who was he?

A. Mr. Ramsay Hoguet, of New York, was the Chief Patent Counsel.

Q. 61. Did you take his advice upon this question as to whether the Alien Property Custodian had the right to seize enemy patents?

A. I did.

Q. 62. And did you get an opinion from him in writing?

A. I did.

MR. KRESEL: I offer in evidence this opinion from Mr. Hoguet.

MR. ANDERSON: In addition to the general objection of immateriality and irrelevancy, I make the specific objection that the orders already introduced show that the Alien Property Custodian acted under the advice of the Attorney General of the United States, and that his opinion is the only opinion that could be a guide to the Alien Property Custodian in matters of his authority, and therefore it matters not what opinions he may have gotten from other counsel as to matters of this kind. The Attorney General's opinion was the only one controlling.

MR. KRESEL: I am bringing that out only in answer to the allegation in the bill that the Alien Property Custodian entertained the opposite opinion; that is all. Of course, I shall show in a minute that the Alien Property Custodian, because of the difference of opinion, submitted the matter to the Attorney General and, of course, followed his advice.

MR. ANDERSON: Then how could this opinion have any relevancy?

THE COURT: My difficulty is twofold: First, as to whether the several opinions that Mr. Palmer got are relevant, when he has told us what his opinion was; and second, if he did get other opinions, whether that fact is all that may be inquired of and not the reasons upon which the conclusions of Mr. Hoguet were based.

MR. KRESEL: May I suggest, as to your Honor's first difficulty, I think I can resolve that by pointing to the bill, which says that not only the Alien Property Custodian, but also others charged with the administration thereof, held this contrary opinion.

THE COURT: Objection overruled. Admitted.

Received in evidence and marked "Defendant's Exhibit No. 36." *(See Exhibits, Vol. IV, page 2275.)*

Q. 63. I also show you a copy of another communication from Mr. Hoguet, addressed to Lee C. Bradley. Was he your general counsel?

A. General counsel.

Q. 64. And ask you whether that is another opinion rendered by Mr. Hoguet upon this question under date of September 25, 1918?

A. Yes. That was more in the nature of a brief to be presented to the Department of Justice, stating the position of the Alien Property Custodian's office, and arguing for it.

Q. 65. Which one do you mean, this last one?

A. This last one.

THE COURT: Same objection, I assume, Colonel Anderson?

MR. ANDERSON: Yes, same objection, and some in addition.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 37." *(See Exhibits, Vol. IV, page 2285.)*

Q. 66. On the 10th of August, 1918, did you write this letter to the Attorney General of the United States, submitting this question that we are now discussing to him for an opinion (handing paper)?

A. Yes, sir.

MR. KRESEL: I offer that in evidence.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 38." *(See Exhibits, Vol. IV, page 2300.)*

Q. 67. The opinion of the Attorney General was that you had no right to seize patents, was it?

MR. ANDERSON: Can we not get that opinion?

MR. KRESEL: I do not need it. You allege in your bill that that was the opinion of the Attorney General. I am not going to encumber the record with unnecessary documents.

THE COURT: You object to his quoting the allegations of your bill?

MR. ANDERSON: I do not, sir; I will stand by the allegations of the bill; but, with the greatest deference to the witness, I am not so sure I would want his testimony on it.

THE COURT: If his answer is not satisfactory, you may have a right to challenge it. So you may take the answer.

Q. 68. Will you answer it?

(Q. 67 repeated as above recorded.)

A. It was.

Q. 69. Do you remember, Mr. Palmer, that in the fall of 1918 there was pending before Congress an amendment to the Trading with the Enemy Act covering patents, trade marks, copyrights, which subse-

quently became a law and is known as the November 4, 1918 amendment?

A. I do.

MR. ANDERSON: One moment. If the Court please, in addition to the usual objection, the question asked him if he remembered that there was an amendment pending before Congress to the Trading with the Enemy Act. Up to that point, if he remembers it, I presume he could testify; but it goes on to say what the substance of the amendment was and what the law subsequently passed was. As to both, I respectfully suggest that the only evidence that is proper is not in the form of question of counsel, but is the act itself.

THE COURT: I assume that the question is merely to direct the witness's attention to a specific amendment and not to place a construction upon it.

MR. KRESEL: Simply to identify the amendment.

THE COURT: You may take the answer.

MR. KRESEL: He has already answered.

Q. 70. Did you personally, or did your office, that of Alien Property Custodian, have anything to do with proposing that amendment?

A. It was drafted in my office and was presented to a committee of the Congress at my direction by Mr. Lee Bradley, I think, who was general counsel.

Q. 71. General counsel for your office?

A. General counsel for the Alien Property Custodian.

Q. 72. Do you know whether, before the amendment was proposed that was finally passed, known as the November 4, 1918, amendment, you or your office had urged a similar amendment which had failed of passage?

A. I had personally urged the passage of such an amendment before the committee.

Q. 73. And will you state the month when that was pending before Congress?

A. I think it was before the Committee on Interstate and Foreign Commerce of the House early in June, 1918, I think June 4th, in support of a long amendment which we had prepared and which we were urging that committee to put on to the Trading with the Enemy Act.

Q. 74. After the amendment passed through Congress (I am now speaking of the amendment that is known here as the November 4, 1918 amendment), and while the amendment was before the President for his approval, did you write to the President a letter, of which this is a copy (handing paper)?

A. I did.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: Isn't that already in?

MR. KRESEL: I have never seen it. And I might say, gentlemen, if I offer any instrument which it is your recollection is already in, please call my attention to it.

MR. ANDERSON: We will do so.

MR. KRESEL: I read two paragraphs, if your Honor will permit me, of this letter. It is dated October 31, 1918. (Reads from exhibit.)

My attention is called to the fact that this letter is already in evidence as Plaintiff's Exhibit 10. With the Court's permission, therefore, I would like to recall this letter.

THE COURT: It will be withdrawn.

MR. KRESEL: So that Defendant's Exhibit No. 39 is withdrawn. And it may appear that I was reading from Plaintiff's Exhibit No. 10.

Q. 75. Prior to the approval of this November 4th amendment by the President, did you have any

conferences with the Federal Trade Commission or any member of that body as to the effect of this proposed new law with reference to the administration of enemy patents as between the Federal Trade Commission on the one hand and the Alien Property Custodian on the other?

A. Prior to the amendment being passed?

Q. 76. Yes.

A. Yes, I think I did.

Q. 77. Who representing the Federal Trade Commission conferred with you about it?

A. Chiefly Governor Fort, who I think was then chairman, I am not certain, and Mr. Victor Murdock. They changed their chairman every year, and I cannot remember now who was chairman, but members of the Commission.

Q. 78. Will you state the views urged by Governor Fort on behalf of his Commission, with reference to the powers of that Commission over enemy patents and the views that you expressed to Governor Fort with reference to the same subject?

Mr. Anderson: If your Honor please, I think it appears in evidence that there is certain correspondence between Mr. Palmer and Governor Fort. But Governor Fort is dead, and I do not think that conferences or conversations between Governor Fort and the witness are evidence in any event, because he was not subject to the jurisdiction of the Federal Trade Commission, and whatever conferences they might have had about the duties and scope of the Federal Trade Commission were not matters he had to deal with, but were fixed by law. In the next place, what Governor Fort may have said as to the scope, the powers and duties of the Federal Trade Commission is not evidence, and especially are these conversa-

tions objectionable in a legal sense in view of the fact that Governor Fort is dead. Therefore, I do not think the conversation should be given.

MR. KRESEL: Will your your Honor permit me a word?

THE COURT: Yes, except as to the last, on which I do not care for a discussion. Governor Fort is not a party to this suit, and consequently I think your last objection is not well taken. So you need not discuss that one, but if you care to say anything on the other you may.

MR. KRESEL: Very well, your Honor. As to the other, your Honor will recall that it is alleged in the bill that one of the things that was misrepresented to Mr. Polk was the attitude of the Federal Trade Commission upon this subject. May I read from the 34th paragraph of the bill. After alleging certain things, it says:

"That other facts in connection therewith, and especially the attitude of the Federal Trade Commission, charged with issuing licenses under the enemy-owned patents and other rights aforesaid, with respect thereto, were misstated and misrepresented to said Frank L. Polk;"

THE COURT: Now then, you are going to show by subsequent questions what was their position?

MR. KRESEL: Certainly.

THE COURT: I was under the impression at the conclusion of Colonel Anderson's objection that it was well taken. In view of the allegations of the bill, I will have to overrule the objection and permit the answer to be taken.

If it is just as convenient to counsel, we will take our usual recess now until 1 o'clock and sit a quarter of an hour longer this afternoon.

(Recess until 1 o'clock, Standard Time.)

AFTER RECESS.

MR. KRESEL: If your Honor please, this morning I promised to produce for Colonel Anderson the Congressional Record showing the amendment of March 28th as it was originally proposed. I now produce the Congressional Record and direct attention to page 3263 thereof, under date of March 9, 1918, from which it appears that Senator Martin offered this amendment and that the amendment as offered had no provision with reference to sales having to be made by auction, nor the proviso "unless the President in the public interest otherwise directs."

The history of these two amendments has already been discussed in this morning's testimony. If Colonel Anderson desires me to introduce the bill as it was originally put into Congress, I am perfectly willing to do it now.

MR. ANDERSON: I do not want you to do that. All I want is for the facts to appear, and I think counsel has accurately stated the substance of the amendment as presented, so far as appropriate.

MR. KRESEL: Your Honor, I have a suggestion to make with reference to these Executive orders. Your Honor will recall that I desired this morning to put in four of those orders: the one of February 26, 1918, the one of the 2nd of April, 1918, the one of July 15th, and the one of July 16, 1918.

I think it would be better to give each of those a separate exhibit number, so that when the record comes to be printed, only those need be printed, the understanding, of course, being that counsel may refer to any others that are in that book; but it will obviate the necessity of printing the whole book. I see no purpose in having that

done. The Government pursued that same course when they offered particular Executive orders.

THE COURT: The suggestion is adopted.

MR. ANDERSON: That suggestion is entirely agreeable to us, with the understanding of course that in view of the change of status, we will have a chance to go over the book and indicate at some time during the trial what amendments we desire to go into the record.

MR. KRESEL: There will be no objection.

THE COURT: You may have that opportunity.

Executive Order Dated February 26th received in evidence and marked "Defendant's Exhibit No. 32-A." (Same as Plaintiff's Exhibit No. 690. *See Exhibits, Vol. III, page 1778.)*

Executive Order dated April 2nd received in evidence and marked "Defendant's Exhibit No. 32-B." (Same as Plaintiff's Exhibit No. 691. *See Exhibits, Vol. III, page 1788.)*

Executive Order dated July 15th received in evidence and marked "Defendant's Exhibit No. 32-C." *(See Exhibits, Vol. IV, page 2270.)*

Executive Order dated July 16th received in evidence and marked "Defendant's Exhibit No. 32-D." (Same as Plaintiff's Exhibit No. 5. *See Exhibits, Vol. I, page 29.)*

By MR. KRESEL:

Q. 79. Mr. Palmer, I shall repeat to you the question which remains unanswered: Will you state the views urged by Governor Fort on behalf of his Commission, with reference to the powers of that Commission over enemy patents and the views that you expressed to Governor Fort with reference to the same subject.

A. Before the amendment of November 4, 1918, Governor Fort took the position that patents were not property and the Alien Property Custodian could not demand and take them over. After the Attorney Gen-

eral had decided that patents were not property and could not be taken by us, we prepared the amendment and then discussed the administration of the new law with Governor Fort and other members of the Federal Trade Commission.

Q. 80. Will you give the other names so that the Government may know with whom?

A. Well, I remember particularly Governor Fort and Mr. Murdock. I think possibly on one or two occasions another member of the Commission sat in, but I would not like to say who it was, because I had many subsequent conferences with the Commission. I may get them confused. I know that Fort and Murdock were both present at practically all of those conferences. Their position was that the method of administering enemy patents under Section 10 was right, and that it should be interfered with just as little as possible by our administration of the amended law.

They insisted that they should have the right to continue to issue licenses for enemy-owned patents. They even insisted at one time that they should have the right to issue licenses on patents owned by American corporations in which the enemy held a majority or controlling interest, which of course I very vigorously opposed because those corporations were under my control and were American citizens; and I insisted that they had no right to issue such licenses.

When we came to working out our plans they opposed every suggestion I made looking to a seizure and sale of the patents chiefly because they expressed the fear that it would result in a continuance of the patent monopoly in American hands and the people would be no better off than they had been theretofore under the patent monopoly in German hands. They insisted that under Section 10 they could issue non-exclusive licenses and build up competitive industries, and especially Mr. Murdock had very strong views on the whole

question of patent monopoly, and he welcomed the opportunity which this act seemed to give him and the Commission to break up the patent monopolies by the issuance of non-exclusive and competitive licenses.

I would say in a word that their view was that the Federal Trade Commission should be continued with such power that the amendment would have been practically of no effect, whereas my position was that the amendment was the law and we had to carry it out, and their powers should be subordinate to it.

Q. 81. Did you, on the first of November, 1918, receive from Governor Fort a letter enclosing a proposed Executive order—that is, proposed by Governor Fort—with reference to the administration of alien patents under this new amendment of November 4, 1918, that was then before the President for his approval?

A. I did.

Q. 82. And is what you have in your hand a copy of such letter and proposed Executive order?

A. It is.

MR. KRESEL: I now offer in evidence Governor Fort's letter with the enclosure.

THE COURT: Admitted, subject to the general and specific objections heretofore indicated by the Government with respect to other evidence and documents.

Received in evidence and marked "Defendant's Exhibit No. 39" and "Defendant's Exhibit No. 39-A." *(See Exhibits, Vol. IV, pages 2302 and 2305.)*

MR. ANDERSON: Mr. Kresel, do you know where the original of that enclosure is?

MR. KRESEL: No, I do not. The letter, if your Honor please, is not very long, and I think I had better read it to your Honor. This is dated

November 1, 1918. (Reads Defendant's Exhibit No. 39.)

MR. KRESEL: In order that the reading may be intelligible, I will read paragraph 1 of this proposed Executive Order.

THE COURT: May I make this inquiry: This proposed Executive order was the one suggested by Mr. Murdock or who?

MR. KRESEL: Governor Fort.

THE COURT: Governor Fort, after the passage of the second amendment of November 4, 1918?

MR. KRESEL: Of November 4, 1918. And I shall show—I may anticipate; this will serve to clarify the situation—I shall show by Mr. Palmer that after this Executive order was proposed, the matter was presented by both gentlemen to the President, and that the Executive order of December 3, 1918, was the result. But I think your Honor should have the views of both.

THE COURT: Yes; that helps me to understand what you are reading.

MR. KRESEL: Paragraph 1 of this proposed order reads as follows (reading). I now proceed with the reading of the letter (reading). Now I will read simply the proviso which the Governor refers to. It is this (reading). I think that is all that I need read with reference to that.

Q. 83. Before I leave the subject of your conferences with Governor Fort, I want to ask you specifically whether in those conferences you and Governor Fort discussed the situation in which the American industries were placed by reason of these alien enemy patents?

A. Yes, we did.

Q. 84. And upon the desirability of relieving the American industry from those incumbrances, I under-

stand there was no difference of opinion between you and Governor Fort?

A. None whatever.

MR. ANDERSON: Not quite so leading, Mr. Kresel, please.

Q. 85. Did Governor Fort mention to you a report made to him by Mr. Edward S. Rogers?

A. Well, he said that he had reports from some of his experts in the Commission relative particularly to the effect upon the American industry of the German patents on dyes and kindred things; but whether he mentioned Rogers's name to me, I do not remember. I afterwards learned of the Rogers' report, but I cannot say that he told me it was Rogers who made it.

MR. KRESEL: Colonel Anderson, I want to offer this report to Governor Fort by Edward S. Rogers, who was with the Federal Trade Commission at the time when the report was made. If there is any question about Mr. Rogers' position, I promise to prove that he was with the Federal Trade Commission and assisted them in the patent situation.

MR. ANDERSON: I never heard of him.

MR. KRESEL: That is the report. I want to offer it.

MR. ANDERSON: If your Honor please, there is no disposition on the part of the Government to object to any copies of papers, because we are working on that basis. But I have never seen this paper and I do not think it can be admitted in this case unless it can be proved to have been submitted to Governor Fort and to have been the basis of some action on his part, and also to have afected the issues in this case. I do not see how it can. I do not know where it came from. It is not even signed. It does not appear to be addressed to anybody. It appears to be a memorandum for

Governor Fort and that is all. I do not know whether he ever saw it. I do not think we could admit that paper as evidence of the facts contained therein in this case.

I am perfectly willing to admit, if any reasonable evidence can be produced, that the report was submitted, but I do not think we could fail to object to the admission of it as proof of the facts contained therein, as the record stands.

MR. KRESEL: I have already stated that if the Government declines to stipulate that Mr. Rogers was in the employ of the Federal Trade Commission at this time—that is dated January 16, 1918—I shall prove it.

MR. ANDERSON: I do not question the fact, but I would like to satisfy ourselves. I do not question counsel's statement. I assume he has spoken from hearsay too. I would not object on the ground of its not being primary evidence, or that that does not prove that this gentleman was in the employ of the Federal Trade Commission. I am willing to let it go on the record in any way that that can be established, but my objection goes to other phases of the matter which I have indicated.

MR. KRESEL: I am going to address myself to the other phases that you have indicated.

It being established that this man was in the employ of the Federal Trade Commission, here then we have a report made by him to the Chairman of the Commission, Governor Fort, and we claim, and we agree with the Government, that any report, any official report, is admissible here, as the Government contended with reference to another Federal Trade Commission report as proof of the fact.

For instance, your Honor will recall that Colonel Anderson read here from a report of the

Federal Trade Commission a portion as to the amount of money that it cost the Federal Trade Commission to administer these licenses for a particular year; and I was very careful to inquire of Colonel Anderson at that time whether he was claiming that that was admissible evidence as proof of the facts therein contained, upon the ground that the statement was contained in an official report, and he took the position broadly and said that was exactly what he was contending.

Now I have here the report made by an official of the Federal Trade Commission to that Commission.

THE COURT: As I understand Colonel Anderson's objection, he questions that, and says in effect that you have not shown that, the report was ever made, in fact, by Rogers to the Federal Trade Commission. That is my understanding of his objection. If I am in error, he will correct me.

MR. ANDERSON: Your Honor has substantially stated my position.

MR. KRESEL: Very well then. I now say that I shall prove that this report was made by Mr. Rogers to Governor Fort of the Federal Trade Commission, and that Mr. Edward S. Rogers was at that time an official of the Federal Trade Commission. Now, have I met the requirements? If I do not prove it, of course it goes out.

THE COURT: But is there this further point in Colonel Anderson's statement, namely, that the connection of the Federal Trade Commission is not here relevant or material, and only such facts as came to the knowledge of the Alien Property Custodian, Mr. Polk, the President, or Mr. Garvan are here material.

MR. ANDERSON: There is one other suggestion in order that counsel may address himself to it.

I think that an official report, made under the law to Congress, such as a Federal Trade Commission report is *prima facie* proof of the facts contained therein, subject of course to being modified or disproved. But this is merely a communication by a gentleman, whom I have never heard of, and I do not question at all that he is the man to whom Mr. Kresel refers, and I am not going to require any technical proof on the subject if we can agree on the facts. But this is a letter addressed by him to one of the members of the Federal Trade Commission and is not in the true sense an official report within the meaning of the law, as I take it. I do not know where it came from. I do not know anything about it.

Therefore, I think that there would have to be very definite proof, and I doubt then if it would be proof of the facts contained therein, unless the gentleman were called here, Mr. Rogers, who I assume is alive, and put on the stand so that his knowledge might be tested.

THE COURT: I do not understand you, Colonel Anderson, because it seems to me that is a repudiation of your concession a moment ago. I assume, of course, that it is not.

MR. ANDERSON: No, sir, not so intended.

THE COURT: That is, if this is an official report, I rather understood you a moment ago to say that then it proves itself, or rather it is proof of the facts therein stated, and I understand you now to be questioning that.

MR. ANDERSON: No, sir, I have tried to make myself clear and I am sure I am not very clear. The question of this man being an employee of the Federal Trade Commission at that time—in whatever capacity—I think we can get by with a mutual concession. If it is proved that this report was

made to Governor Fort and actually reached him, etc., that I will facilitate in every possible way I can. But we come then at last to the question if this was an official report as required by law, by either an officer or an official of the Government in the discharge of his duties, though how far that doctrine will go I am not prepared to say, it might be contended that it proved the facts therein contained in a prima facie manner. Glancing at the first few lines of the report it is a discussion of conditions in a certain industry in the United States.

MR. KRESEL: And at the end of it there are certain suggestions as to what should be done.

MR. ANDERSON: I do not know that this gentleman had any knowledge from which he could write of things of that kind, or that came within the duties of his office in any way, and therefore within the nature of an official report or clearly within the scope of an official body, as required by law. Therefore I think if those facts are going to be proved as facts, as to the condition of the industry in the United States, of the dye industry, I should be able to examine into the sources of this gentleman's information and his qualification to speak on that subject. I might write a letter from hearsay on the conditions of an industry, the steel industry, and it would mean nothing.

THE COURT: If this is an official report, it either is or is not primary evidence of the facts therein contained.

MR. ANDERSON: I think this particular kind of report is probably not primary evidence of the facts, because of the peculiar circumstances I have outlined. I do not know as I have made myself very clear, but I hope I have.

THE COURT: Yes, I understand. What do you undertake to prove?

MR. KRESEL: I shall prove, your Honor, that this gentleman was in the employ of the Federal Trade Commission, had charge of what was known in the Federal Trade Commission as the Enemy Trade Division, and he had charge of issuing these licenses. This is a report made by him in his official capacity to the chairman of the Commission, in which he reviewed certain facts and ended up by making certain recommendations to the Commission.

THE COURT: Are you going to trace the information therein contained not only to Governor Fort but to Mr. Palmer and to the President, or to any of them?

MR. KRESEL: I have already asked Mr. Palmer——

THE COURT: Yes, but he has not stated that the information he got was the information therein laid down, has he?

MR. KRESEL: He has stated that the name of the writer of the report was not mentioned to him, or at least he does not recall it.

THE COURT: I do not gather that from his testimony.

Q. 86. Mr. Palmer, in the course of your discussions with Governor Fort, did you discuss with him the general question of the effect of the German patents upon American industry?

A. I did.

Q. 87. Did Governor Fort indicate to you that his office, that is, the Federal Trade Commission, had been making any investigations upon the subject?

MR. ANDERSON: If your Honor please, I know your Honor's ruling on that subject, but I do think the questions in this case, if they are of any im-

portance at all here, should follow the rules of evidence and ask what was said or what was done about a certain matter. I do not think counsel ought to put (I do not want to put it in an unpleasant way)—to put the question in such a way that it puts on the record facts that he desires to be there with a yes or no answer. While I recognize your Honor is rather liberal on that point, in the particular cases I do feel that we ought to follow the rules of evidence.

THE COURT: It seems to me that the prohibition against leading questions was laid down to obtain certain results; and that the nature of this suit is such that it challenges the existence of the power exercised by the Alien Property Custodian, by Mr. Polk, and by the President, challenges the knowledge of each of those persons with respect to the facts as to which they acted, and that it also challenges the sufficiency of the reasons for their actions. It seems to me that the reports, the contents of which came to the knowledge of those persons, or any of them, are available and admissible in evidence to show the information on which they acted. On your undertaking heretofore made and in your understanding of this testimony that the contents of this report were communicated to Mr. Palmer, it is admitted subject to the general and specific objections of counsel for the Government.

MR. KRESEL: Very well, your Honor.

Received in evidence and marked "Defendant's Exhibit No. 40." *(See Exhibits, Vol. IV, page 2306.)*

MR. KRESEL: I shall not stop to read that now, your Honor. It is rather lengthy.

MR. ANDERSON: What is the date of it, please, Mr. Kresel?

MR. KRESEL: January 16, 1918.

Q. 88. Referring now to Governor Fort's letter to you of November 1, 1918, with which he enclosed a proposed executive order, I read the last paragraph of his letter, wherein he says: "Of course, I do not know the views of the President on this matter, and would therefore prefer if you apply for the order in my absence that you should show this letter to him, but if larger power than this is asked, the Commission would like to be heard." Having that in mind, I ask you whether you sent to the President any proposed executive order in this connection?

A. I either sent it or took it.

Q. 89. Did you have a conference with the President about such Executive order?

A. I did.

Q. 90. Was Governor Fort present at the conference?

A. He was present at the conference?

Q. 91. And at that conference did you state your views about the matter, and did Governor Fort state his views about the matter?

A. Yes.

Q. 92. I now show you Executive order made by President Wilson and dated December 3, 1918, and ask you to state whether after that conference at which you and Governor Fort were present the President made that Executive order upon this subject?

A. He did.

Q. 93. Please look at that Executive order and state whether it is in the form that you proposed it, or whether the President made any changes therein?

A. It is as I prepared it, with the exception, I think, that in Paragraph V in the draft submitted to the President, the name of the person in whom the power and authority of the President were to be vested was blank. One other change was made by the

President, and that was the addition of the last sentence.

Q. 93. (Continued.) In the order?

A. (Continued.) Which is: "Nothing in this order shall nullify or impair any license heretofore granted by the Federal Trade Commission pursuant to the provisions of Section 10 of an Act of Congress entitled 'An Act to define, regulate and punish trade with the enemy, and for other purposes, approved October 6, 1917.'" Those words were added by the President to my draft.

Q. 94. You spoke of the insertion of the name of someone. The insertion is the name of Frank L. Polk?

A. Yes.

MR. KRESEL: In order that your Honor might understand, this is the same order that appointed Mr. Polk.

THE COURT: I understand that. Order of December 3, 1918.

MR. KRESEL: Yes, your Honor.

Q. 95. Did you get a letter from President Wilson dated November 27, 1918?

MR. KRESEL: I have a copy here. Will you produce the original?

(Original letter produced by counsel for defendant, and handed to witness by Mr. Kresel.)

A. Yes, sir.

Q. 96. I notice in that letter there is this sentence.

MR. KRESEL: I will offer the whole letter, Colonel, to make it intelligible.

MR. ANDERSON: May I look it over?

MR. KRESEL: Look at the copy (handing paper).

Q. 96. (Continued). I read this sentence: "Dear Palmer: I dare say you are right and I was wrong about the method of completing the sales you have already undertaken, and I will sign the proclamation I

returned to you the other day if you will return it to me. Your plan of the disposition of enemy property in the United States meets with my approval in principle, and I dare say will meet with it in detail when I have a chance to compare it with the proposals that will be made on the other side. I am going to take the document over with me as a basis for discussion." Now, with that letter before you I would like you to state what you said to the President at the conference that he refers to in this letter, and what was the plan for the disposition of enemy property that he says met with his approval in principle and would probably meet with his approval in detail.

MR. ANDERSON: May I ask if the plan was ever submitted in writing?

MR. KRESEL: We have no copy.

THE WITNESS: I think it was with the letter.

MR. KRESEL: We have no copy. We have been unable to obtain a copy. Of course, we have not access to these papers.

THE COURT: Have you given the Government notice to produce?

MR. KRESEL: We have not been giving each other notice to produce, your Honor.

MR. ANDERSON: I never heard of this particular correspondence.

MR. KRESEL: We undertook to agree in advance that we might submit copies, and so on. We have obviated all that. But I am going to inquire whether that was one of the documents that we asked for and that was stipulated by the Government. No, Mr. Boggs says that it was not. We have no copy, your Honor; it it not available to us. If counsel desires that I withhold further questioning on this point until he can produce the only copy that is available, which is in their possession, why, I am perfectly willing to do that.

You can get it from the files of the White House or the files of the Alien Property Custodian. We can not.

MR. ANDERSON: I will state, if your Honor please, that we do not know whether we can get it or not. This letter is an official letter, and we have never seen or heard of it.

THE COURT: You are the Government of the United States.

MR. ANDERSON: I know; but if your Honor please, we did not have charge of these files and we find lots of papers coming in here that we have never heard of before. This paper was never produced by us. We do not know anything about it. We will undertake to produce it if it is in the records of the United States; but I cannot say that it is in the records of the United States, the files of the Alien Property Custodian. We have searched them and we have no record of any such paper and never heard of any such paper.

MR. KRESEL: You do not know what the paper was. You can not tell.

MR. ANDERSON: We made a search of the files to find out if there was such a paper.

THE COURT: If there is objection, the objection is sustained.

MR. ANDERSON: We will make a further effort.

THE COURT: Until you have an opportunity to say whether you can furnish the paper.

Q. 97. Without, then, Mr. Palmer, discussing the contents of the plan that you submitted to the President, I would like you to state if you will in the conversation that you had with the President which gave rise to the writing of this letter, and particularly I would like you to state what it is that the President is referring to in the first sentence wherein he says, "I dare say you are right and I was wrong about the

method of completing the sales," and that he would sign a proclamation. Will you please just address yourself to that?

A. I sent to the President a draft of the proclamation which I wanted him to issue, declaring a large number of persons there named to be enemy persons.

Q. 98. Will you stop there a minute, please?

A. Certainly.

MR. KRESEL: If your Honor please, your Honor will recall that under the Trading with the Enemy Act, an enemy was defined in certain ways, and in addition thereto the President by proclamation could designate even a German resident here as an enemy. I simply wanted to call your Honor's attention to that because that is what Mr. Palmer is now referring to. Your Honor will find it in Section 2, I think, of the Act.

Q. 99. Will you go on, Mr. Palmer.

A. Such other persons or classes of persons as the President might by proclamation declare to be enemies. We were in the habit before we sold one of these enemy properties, to make assurance doubly sure, that the stocks which we were selling belonged to enemy persons, to have the President proclaim that those particular persons were of the enemy class. So that in addition to the original determination of their enemy character we had this proclamation. I sent to the President a proclamation covering some three hundred enemy persons, and he replied to me returning the proclamation, showing that he questioned whether we should proceed with the sales program——

MR. ANDERSON: Pardon me, Mr. Palmer. Have you got that letter, Mr. Kresel?

Q. 100. Was that in the form of a letter?

A. That was in the form of a letter.

Q. 101. Have you the letter?

A. I have the letter.

Q. 102. Will you find the letter here, please, November 29, 1918, is the date of the proclamation.

A. I would like to say a word, if I might be permitted, to you, in answer to the intimation that these official letters of the President of the United States were taken from the record.

MR. ANDERSON: I did not mean to make any unpleasant intimation.

MR. KRESEL: The intimation has been made.

MR. ANDERSON: I am entirely agreeable that Mr. Palmer make any statement on the subject that he wishes.

A. (Continuing.) The letter is in my possession. It is a very common practice in the departments at Washington to put letters from the President in a separate file and to put either photostatic copies or actual copies in the regular file. These letters appear in this file on that account. They are all letters from the President of the United States. Photostatic or other copies of every letter are in the official files at Washington. This is the letter.

MR. KRESEL: I offer in evidence the letter which Mr. Palmer has produced, from the President to Mr. Palmer, dated November 22, 1918. I ask your Honor to permit us to substitute copies of these letters so that the originals may be retained by Mr. Palmer.

Considered marked "Defendant's Exhibit No. 41," copy to be produced later. *(See Exhibits, Vol. IV, page 2310.)*

MR. KRESEL: I now read the letter. (Reading).

Q. 103. After you had received this letter, you received the letter from the President of November 27, 1918; is that right?

A. Yes, sir.

MR. KRESEL: I now offer in evidence that letter and I have a copy thereof which I ask be marked instead of the original.

THE COURT: Is it satisfactory that the copy should go in instead?

MR. ANDERSON: Entirely so.

Received in evidence and marked "Defendant's Exhibit No. 42." *(See Exhibits, Vol. IV, page 2311.)*

Q. 104. In this letter of November 27, 1918, the President says to you: "I dare say you are right and I was wrong about the method of completing the sales you have already undertaken and I will sign the proclamation I returned to you."

Did you then send back to the President the proposed proclamation?

A. I did.

Q. 105. And did he sign it?

A. He did.

Q. 106. I now show you a proclamation printed in this Trading with the Enemy booklet, beginning at page 121, and asking you to state whether that is the proclamation at the bottom of the page?

A. That is the proclamation.

MR. KRESEL: I offer in evidence the proclamation which commences at page 121 of this book. It is dated November 29, 1918.

Received in evidence and marked "Defendant's Exhibit No. 43." (Same as Plaintiff's Exhibit No. 729-F. *(See Exhibits, Vol. III, page 1940.)*

THE COURT: Is that the proclamation or draft of the proclamation which you were inquiring about a moment ago, Colonel Anderson?

MR. KRESEL: No, your Honor; it is not. The other was a different document which the Government is going to try to get for us.

Q. 107. Mr. Palmer, you know Mr. Joseph H. Choate, Jr.?

A. Yes, sir.

Q. 108. Was he in your office when you were Alien Property Custodian?

A. Yes, sir.

Q. 109. What did he have particular charge of?

A. He was in the Bureau of Investigation, in particular charge of the investigation into the chemical industry and the German chemical interests in the United States.

Q. 110. Did he perform his duties under your direction or under the immediate direction of some one else?

A. I would say under the immediate direction of Mr. Francis P. Garvan, the head of the Bureau of Investigation.

Q. 111. And were you kept informed of what he was doing?

A. I was.

MR. ANDERSON: If your Honor please, that is a clear conclusion. It might cover the entire situation of reports here. If counsel wants to know what was reported, and how, and the facts about it, all right. If a man is kept informed of what Mr. Choate is doing, he only knows from information he receives. That question would cover every possible thing that Mr. Choate did while he was connected with the office. I think that is too general.

THE COURT: Do you press the question, Mr. Kresel?

MR. KRESEL: No, your Honor. Strike it out.

Q. 112. Are you familiar with the report made by you to the President in the month of February, 1919?

A. I am.

Q. 113. Do you know whether Mr. Choate co-operated in framing any part of that report?

A. Mr. Choate prepared the draft of the chapter on chemistry for inclusion in the report, at my request, and submitted it to me.

Q. 114. Can you state how long, before the report was actually sent by you to the President, you had before you Mr. Choate's report on the chemical situation either in its final form or in draft form?

A. You mean by his report the draft of the chapter on chemistry or chemicals?

Q. 115. Yes.

A. My recollection is that it was in my hands for a couple of weeks at least before it was transmitted to the White House.

Q. 116. Do you remember when you sent the report to the President?

A. On the 27th of February, 1919.

THE COURT: This has reference to your Exhibit 30?

MR. KRESEL: That refers to Defendant's Exhibit 30.

Q. 117. Before this report Defendant's Exhibit No. 30 was sent to the President, did you formulate any general policy in your office with regard to patents?

A. I did.

Q. 118. I show you this memorandum dated January 13, 1919. Does that embody the policy with reference to patents, that was to be pursued by your office? (Handing witness paper).

A. With a slight modification that was made when my attention was called by Mr. Hoguet to another part of my arrangement with the Federal Trade Commission, this is the policy that was then publicly announced.

Q. 119. Will you state what the additional matter was?

A. That it would be the policy of the office to demand and take over enemy-owned patents which the Government might require for its own use.

Q. 120. That was additional to the policy outlined in that memorandum that I showed you?

A. Yes, sir. In this statement I divided the patents into three classes. There really should have been four, and there were. It was modified in writing I think.

MR. ANDERSON: It was modified in writing?

THE WITNESS: Mr. Kresel has it.

MR. KRESEL: Yes, I will produce the writing. My recollection, gentlemen, is that this was put in by you. Am I wrong about that?

MR. ANDERSON: I think it is very probable.

MR. KRESEL: I find that it was not, so I will now offer this in evidence.

Received in evidence and marked "Defendant's Exhibit No. 44." *(See Exhibits, Vol. IV, page 2312.)*

MR. KRESEL: It is dated January 13, 1919, "Memorandum of conference in regard to patent situation. Present: Mr. A. M. Palmer, Mr. Caton, Mr. Horne, Mr. Whitaker, Mr. Keohan, Mr. Whitmore, Mr. Gordon, Mr. Ferry."

Q. 121. Were all those gentlemen whose names I have called officials in your office?

A. I do not place Mr. Whitmore. I remember all the others as officials in the office.

(Mr. Kresel then read further from Defendant's Exhibit No. 44.)

MR. KRESEL: I have not read all of it, but I have read all that I care to.

Q. 122. I notice that Mr. Hoguet was not present

at that conference. Did you direct that a copy of that memorandum be sent to Mr. Hoguet?

A. I did.

Q. 123. And was it sent to him?

A. It was.

Q. 124. Then did Mr. Hoguet call your attention to this omission that you speak of?

A. Yes.

Q. 125. Is this a copy of the letter that you received from Mr. Hoguet upon the subject, the letter being dated January 16, 1919? (Handing witness).

A. Yes, sir.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: It is so long that I will not try to read it. I will just let it go in without reading it.

THE COURT: It is admitted.

MR. KRESEL: Is there any objection to it?

MR. ANDERSON: No, except the general objection. I won't offer any objection. It is a photostat copy?

MR. KRESEL: Yes. Perhaps you will withdraw all objection because my attention is called to the fact that that is already in as Plaintiff's Exhibit No. 49.

MR. ANDERSON: If that is the case, then I will withdraw the objection.

THE COURT: The exhibit is withdrawn?

MR. KRESEL: Yes, sir. I now read from Plaintiff's Exhibit No. 49 just one paragraph.

THE COURT: I think it should be made clearly to appear that Colonel Anderson had not fully examined the exhibit at the time that he made his objection.

MR. KRESEL: Yes, certainly.

THE COURT: And that he was just making the

general objection so as to cover all contingencies. That I think should be of record.

MR. ANDERSON: I thank your Honor.

MR. KRESEL: I am reading the second paragraph. (Reads from Plaintiff's Exhibit No. 49).

Q. 126. You spoke this morning of discussing with President Wilson in your conferences preceding the March, 1918, amendment the subject of another amendment then pending before Congress, bearing upon the acquisition by the Government of the German steamship docks. I think you spoke of the Hamburg-American line docks and the North German Lloyd docks?

A. Yes, sir.

Q. 127. Did you have any further conversation with the President upon the subject of those docks; and if so will you state the time and what the conference was?

A. I had such a conference a few days before the President left for Paris, the first time, he came to my office, the office of the Alien Property Custodian and asked me——

Q. 128. I want to fix the date. He left in December, 1918, I think.

A. My recollection is he left on December 4th.

MR. ANDERSON: That is right, sir.

Q. 129. December 4, 1918?

A. Yes, sir. It was a few days, not more than a week before that. He said that he wanted me to hurry up the business of making a final transfer of the title of the Hamburg-American line and North German Lloyd line terminals at New York, in order that he might pay over the money to me for those properties, and have it an absolutely closed incident before he arrived at the Peace Conference, and he stated the reasons which led him to that desire.

Q. 130. And what were those?

A. They were that he desired to be in a position t the Peace Conference to refuse to enter into any egotiations whatever for the return of the terminals ut to say that that matter was closed, that the charac- r of the enemy interests had been changed from ter- inals into cash in the Treasury of the United States.

THE COURT: May I stop you there for a moment, Mr. Palmer?

THE WITNESS: Certainly.

THE COURT: I am wondering, Mr. Kresel—I realize the position in which you are placed by the allegations of this bill—but I am wondering now whether your inquiry does not go into such relations and such disclosures by the President to an official in the Executive Department that should not be inquired of unless absolutely necessary for your protection.

Mr. Palmer is answering your question, as is proper, but it seems to me the duty falls upon me, under the peculiar character of this case, to make this inquiry at this time; because, surely, the evidence now called for by you, and the reasons of the President of the United States for his action in international relations, seem to me a matter that a court should not require to be disclosed, and if disclosed, the Court is without power to review. Consequently I make this inquiry at this time.

MR. KRESEL: Upon your Honor's slightest intimation, I shall desist from further inquiry into the subject. May I say, however, that not only is this matter relevant with reference to the allegations in the bill, but particularly upon the proposition that the transaction that the witness is now describing was put through pursuant to an amendment to the Trading with the Enemy Act passed at the same time and by the same Congress

as this amendment of March, 1918, that we are dealing with. In other words, I present, or I was going to present—because as I say to your Honor, I shall immediately desist——

THE COURT: I am making an inquiry and not a ruling so far, Mr. Kresel.

MR. KRESEL: In other words, the President proposed an amendment covering these docks. Mr. Palmer, as Alien Property Custodian, with the consent of the President, proposed the other amendment with reference to generally selling enemy property. Both amendments were before Congress at the same time and were passed at the same time and were amendments of the same Section, of the same Act at the same time.

What I was going to show was the transaction that the President had with the Alien Property Custodian with reference to those docks under that amendment in order to show what interpretation should be placed not only upon the amendment that they were acting under with reference to the docks, but the concurrent amendment under which the properties here involved were sold.

But as I said to your Honor when I started, I shall ask no further questions about it.

THE COURT: Do not misunderstand me. I am making so far merely an inquiry. I should be glad to hear Colonel Anderson.

MR. ANDERSON: If your Honor please, I did not object to the evidence, because I am trying not to object; but I think that the evidence is objectionable from two standpoints, since your Honor has asked me. First, the standpoint which your Honor has suggested, which seems to me to have very strong weight; and the further standpoint

that upon the statement of counsel this is clearly foreign and irrelevant matter.

THE COURT: Just at the moment I will ask you to confine yourself to the other ground.

MR. ANDERSON: I was going to say, when your Honor asked the question, as to the first ground, I recognize the difficulty that confronts the Court and counsel in drawing the line of discrimination in this matter, and I have no desire in the world to undertake to limit the evidence, if it can be avoided; but I do not think that questions of international relationships should be brought into this case.

I think, representing the Government, in the humble way that I do here, it is probably my duty to object to that, and even the President's desire to hasten the transaction involved in these properties is a matter that might (I do not know) be a subject of some international embarrassment; and certainly his reasons for doing so (I do not know what they were) might be also a very serious difficulty. Now, if it is appropriate on direct examination, it must be equally appropriate for full searching on cross examination, and therefore it would place the Government in a rather embarrassing position, and one which I say in advance I would resolve against the cross-examination.

THE COURT: Now then, my difficulty is increased by this fact, namely, that this is a suit instituted by the Government of the United States, and by the further fact that owing to the characteristics of this suit and the incidents connected with it, we have adopted a broad rule allowing all oral and documentary evidence which in the opinion of counsel upon either side is pertinent or relevant to be admitted and placed of record in the case.

Now, if the Government of the United States institutes a suit which is of such a nature that the defendant, in order to protect itself is required to go into those matters, the question in my mind is ultimately presented whether or not the plaintiff, namely, the Government of the United States, has not by bringing the suit waived all rights that it might have to object with respect thereto, and while as a matter of public policy such testimony would ordinarily be excluded, is not the rule that the Government of the United States, when it institutes a suit, is estopped from asserting it if such evidence should be pertinent to the defense?

MR. ANDERSON: Your Honor, that is a very delicate question. Will your Honor permit me to answer, because it places the Government in such a position that it must respond.

THE COURT: Yes.

MR. ANDERSON: The Government in this case has raised no question as to international rights of any kind. The question is purely between the Government and its officers and citizens. Therefore, as to the policy of selling the property here in question, the wisdom of making a sale of the property, assuming that the proper methods and statutory proceedings were carried out, the Government has raised no question, so far as I recall, in this bill. In fact, I think I have stated with the greatest clearness that I can express that as to the political wisdom of doing a thing of this kind, I would be one of the first to challenge the right of any court to inquire into—the political wisdom; and the sole position of the Government on that question is, first, a challenge of the power to do this thing in its various phases, which I need not go into, but your Honor understands from the argument; and second, a question which is a nice

one, I concede, but on our view of the authorities is perfectly reviewable, whether the person exercising the discretion, assuming the power to have existed to exercise discretion, acted upon such a mistake of fact or want of knowledge of the fact as to make the exercise of discretion a guess. To use an analogous instance, suppose a court were to pass on a case, and the Judge was taken ill, and another Judge came in and never read the record at all, passed on the case without reading the record, in that event it would be really a guess on the results; it would not be a judicial determination at all.

Now, assuming the facts here involved, our view is that this peculiar statute, an amendment added by Congress, required to an unusual degree an ascertainments of those facts. Whether that is true as a matter of law, or whether the facts were sufficiently ascertained, and what were the facts presented are matters of record. What the President said, what he did, in my humble judgment is not called into question in this case.

The sole question is whether somebody so advised him. I hope I have made myself clear on that, and that merely goes to the fact of whether he exercised a discretion founded upon fact or not, and that has related chiefly to the order of Mr. Polk.

In the second place, if by any intendment this bill can be construed to involve any question of international policy or relationship, I do not recall it, and therefore I have not inquired into that question.

Your Honor will recall that in the evidence given by Mr. Polk my direct examination was limited to a very narrow scope, and the cross-examination broadened out a great deal, and on my

re-direct I only asked him as to specific data that was presented to him. I did not ask him as to his reasons for doing anything, even though I took the position that he was acting as an individual and not as an officer.

If I have made myself clear, I hope I have answered your Honor's question, that I think that the case does not call into question here any matter of political wisdom or policy, either domestic or international; and my view of the right of the Court to inquire into presidential discretion, I wish to state again, is limited to the question of an inquiry into the power to do the act, in the first place; second, into whether the method of performing the act conformed to the requirements of the act under which the Executive officer was acting, whether the President or anyone else; and third, where he is required to act upon a state of facts, whether those facts were available or before him to an extent that presented a question of discretion.

I think it has been reviewed a great many times and I do not want to go into the authorities. The Courts have drawn that nice distinction, with due reference to the Executive Department and I think very clearly. I hope I have stated it accurately. I am trying to state what I understand to be the decisions of the Supreme Court of the United States and I do not wish this case to be in any wise enlarged beyond the construction of those decisions, as I recognize the extreme delicacy of this matter. The other objection I will not discuss.

THE COURT: I wanted this argument on the assumption that it is pertinent. The other question is an independent one which we have not given much attention to.

MR. ANDERSON: I hope I have made myself clear, your Honor.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: I think, your Honor, that the situation that has arisen is but another proof in support of your Honor's statement as I recall it, during Mr. Polk's examination, of the wisdom of the rule laid down by the Courts, that the Courts will not inquire into the reasons actuating the exercise of a discretionary act by the Executive, where such discretion was committed to him by Congress.

I shall prosecute this inquiry no further. I shall immediately go to another subject.

MR. ANDERSON: Of course, I understand that the answer, so far as it went, is taken subject to the objections which I have indicated.

THE COURT: I assume that all testimony taken upon the part of the plaintiff was subject to any objection that the defendant might at any time raise thereto and that all testimony taken on behalf of the defendant is subject to such objections as may be taken at any time before final decree with respect thereto.

Q. 131. Mr. Palmer, among the properties in your charge as Alien Property Custodian, did you have any property of the Bayer Company?

A. We had the capital stock of the Bayer Company owned by enemy persons transferred to the Alien Property Custodian, and as stockholder operated the Bayer Company.

Q. 132. What was the business of that company?

A. They were distributors, possibly makers, of some pharmaceuticals, particularly the medicinal preparation called aspirin.

Q. 133. Was the corporation operating under patents?

A. Yes.

Q. 134. Did you have those patents? I mean had you seized those patents?

A. We took those patents.

Q. 135. As German property?

A. As enemy property.

Q. 136. And do you recall in whose names those patents were or some of them?

A. My recollection is they were in the name of the German owners of the stock of the Bayer Company.

Q. 137. But they were not in the name of the Bayer Company here whose stock you seized?

A. No.

Q. 138. Did you sell the Bayer Company?

A. I sold the Bayer Company.

Q. 139. Do you remember what month it was, and what year?

A. I think in December, 1918.

Q. 140. Did you sell the stock that you had seized?

A. I did.

Q. 141. Did you sell at the same time the patents that you had seized?

A. Yes.

Q. 142. That is, the patents that were being used in the Bayer Company's business?

A. That is right.

Q. 143. Up to that time, that is up to the time of the sale of the Bayer Company, had you seized any patents that were not attached, so to speak, to a going business which you had or in which you had stock?

A. No, I think not.

Q. 144. Do you recall to whom the Bayer Company and the patents were sold?

A. The Sterling Products Company of West Virginia, was the purchaser as I recall it.

Q. 145. And it brought a considerable sum of money?

A. Considerable.

Q. 146. Can you tell us about how much?

A. Something more than five million dollars.

Q. 147. At that time did you know that there were other German patents here in the United States?

A. Yes, we knew that.

Q. 148. Had you caused an investigation to be made by Mr. Choate with reference to such German patents?

A. Mr. Choate had been making at my request an investigation into the entire chemical situation as affected by the German ownership of patents, American patents or otherwise, in this country.

Q. 149. The sale of the Bayer plant to the Sterling Products Company carried with it not only the stock of the Bayer Company but also the patents?

A. There were sold at the same time something like 1200 patents.

THE COURT: Do you mean the capital stock or the tangible assets?

MR. KRESEL: No, the capital stock of the corporation.

THE WITNESS: Yes, that is what we sold.

Q. 150. And 1200 patents, as I understand, you had seized as the property of some Germans?

A. In the management and operation of the Bayer Company's business, through a Board of Directors appointed by me representing the enemy-owned stock which had been assigned to me, as Alien Property Custodian, we discovered that they were using patents the title to which was in enemy persons and not in the Bayer Company. When we got that property ready for sale or approached the time that we desired to sell it, in order that all assets might go to the purchaser, we demanded and took over all those patents and sold

them along with the stock of the company at public sale to the highest bidder.

Q. 151. Was there a subsidiary of the Bayer Company?

A. Yes.

Q. 152. Do you recall the name of that?

A. There was a company which we treated as in the Bayer nest called the Synthetic Patents Company, which owned some patents.

Q. 153. Some of those 1200 patents?

A. That is my recollection.

Q. 154. And who owned the stock of the Synthetic Patents Company?

A. The Bayer Company.

Q. 155. Then is it a fact that when you sold the stock of the Bayer Company, that carried with it the stock that you owned of the Synthetic Patents Company?

MR. ANDERSON: I think that is a question of law. He has stated the relationship, and I have not called for the evidence of it that is usually required. I think it is a question of law what the sale carried with it. Whether the stock was owned by the corporation and what would be the effect of the sale is purely outside the scope of an examination of the witness here.

THE COURT: Can there be any doubt it is a legal conclusion if the witness disclosed that the stock of this subsidiary company was in fact all owned by the Bayer Company?

MR. KRESEL: There is no doubt that it is a legal conclusion, but I was not aware that there could be any doubt as to what the conclusion is.

MR. ANDERSON: Then why ask the question?

THE COURT: I think the objection is well taken.

Q. 156. Subsequent to the sale of the Bayer

Company did you in any way change the policy that you had outlined with respect to the seizure of the patents?

A. Well, the Bayer Company sale opened my eyes to one phase of the situation that I had not before fully realized.

MR. ANDERSON: I think I would like to ask for a direct answer to that question.

THE WITNESS: Of course, I am trying to.

MR. ANDERSON: You are leading up to it, but just for legal reasons.

THE COURT: Will you have a yes or no answer to that, Mr. Kresel?

Q. 157. Will you answer that yes or no, please.

A. Yes.

Q. 158. Will you state just what change you made and what led to the change?

MR. ANDERSON: And what time, please.

MR. KRESEL: Yes, please state the time.

A. Well, immediately after the Bayer sale I realized in the first place that it was a very dangerous thing to sell a large batch of patents——

MR. ANDERSON: If your Honor please, may I interrupt one minute. I have no objection except the general objections which I have stated, to the witness's stating whether there was a change of policy and when that change took place, but if there is any written evidence of it I ask that they produce the evidence. I do not think the reasons underlying it are evidence now. If I examine him on cross-examination I might test his reason, but I do not think that counsel could follow the reasons which may have actuated this witness to change a policy. The essential fact is whether he changed it or not, and that is all to be said about it

MR. KRESEL: I want to be heard on that, your

Honor. The charges made here are that the change of policy was brought about by conspiracy. Your Honor will recall the charge in the bill that, whereas Mr. Bradley appearing before the Congressional Committee urging the adoption of this 4th of November amendment, is alleged to have stated that the only purpose was in order to enable the Custodian to sell patents which went with a going business, that then they draw the conclusion that that was the sole reason why Congress passed the legislation and they then go on and say that the conspirators got together and got the Custodian to practically misuse the November 4, 1918 amendment in order to enable the conspirators to carry out their conspiracy. I have a right to show by this witness what in fact it was that changed his policy, and I do not have to wait upon the chance that counsel on the other side will bring it out by cross-examination.

THE COURT: I think for the reasons stated by you, Mr. Kresel, and also for other reasons, this testimony is admissible. You may take the answer.

MR. ANDERSON: Exception.

THE WITNESS: What is the question?

(The question was repeated as follows.)

Q. 159. Will you state just what change you made and what led to the change, and please state the time?

A. Immediately after the Bayer sale, when I realized that a large number of chemical patents had gone in one sale to a single purchaser, with all that all might imply by way of monopoly of the product, etc., and that the Bayer Company was practically the only one of these German chemical companies which had a going business in this country, where we could have an actual sale either of the stock or of its assets and

place them in American hands, I saw that if I adhered to the policy of only taking over and selling such patents as were directly affiliated with or connected with some going concerns which I was proposing to sell I would miss the accomplishment of the purpose we had in mind of Americanizing the industry. Therefore, I would have to do just what I announced on January 13th as my policy, that we would seize or take over and sell enemy-owned patents where they were important to an industry in America in which the Alien Property Custodian had any concern or interest, and from that time on our policy was of that sort.

Q. 160. When you came to the conclusion of the policy that you have outlined what steps did you take, what instructions did you give, to carry out that policy?

A. The first consideration of it was in a conference immediately after the Bayer sale, with Mr. Garvan, chief of the Bureau of Investigation, who felt as I did on the subject. We were agreed that some course, neither of us then knew what, had to be pursued which would result in taking these other patents not associated with any going business, in the dye and chemical line, from the German owners and Americanizing them.

Mr. Anderson: Could you state the time and place of that?

Mr. Kresel: I am coming to that.

A. (Continued.) Immediately after the Bayer sale in my office in Washington, when Mr. Garvan came down from New York, where his offices were, we had the first conference on the subject.

We were both impressed by the fact that the Bayer sale demonstrated that if that policy was going to be continued, we were at the end of our rope as far as making an American industry out of the chemical industry was concerned and I asked Mr. Garvan to

give consideration to the matter, to have Mr. Choate and Mr. Hoguet work upon it, and to bring back to me, when they were ready, some feasible plan by which we could accomplish the purpose that we had in mind, of putting these patents in a way where they might be used for the general public benefit in the building up of a competitive chemical industry in this country, to the end that the Government might be protected and safeguarded in the future, in peace and in war, by a great chemical industry, with all the possibilities of weapons of defense coming out of it as by-products and all that. That, Mr. Garvan went to work at.

Q. 161. May I stop you there. I wonder if you would enlarge somewhat or be a little more specific as to your meaning of the statement that if you pursued the policy that was pursued in the Bayer sale, you would be at the end of your rope. I do not quite get the meaning of that?

A. Well, my information was that practically speaking—I may not be absolutely accurate about it—but practically speaking the Bayer Company was the only chemical property that we would be likely to have for sale, the only one where there was a going business in this country. The other German chemical companies had agencies over here, but they were mere selling agencies as a rule. There was not anything for us to take and seize and sell to the public at public sale.

Therefore, if we did not take the patents which these other concerns in Germany owned, we would not have any means of putting into American hands the control of the chemical industry, outside of that, which the Bayer had, which at that time was in German hands.

Of course, by that time I knew what Mr. Choate had found out, not only from himself, but also from Mr. Garvan himself. Choate and I saw each other frequently and he told me what he was learning. Gar-

van made it a practice to come to Washington every week and spend a day, and frequently a large part of the night, telling me what had been accomplished in the investigation of enemy ownership in various properties and particularly, this difficult and interesting and important problem of the chemical patents. So that by the time the Bayer Company came around to be sold and was sold, I knew, as Mr. Garvan knew, what the situation was.

Q. 162. How long had Mr. Choate been working on this investigation?

A. Nearly a year at that time, since February 1st.

Q. 163. 1918?

A. Since February 1, 1918.

Q. 164. Now then, in your conferences with Mr. Garvan, Mr. Choate and Mr. Hoguet, as to working out some plan of accomplishing the purpose that you had in mind as to the disposition of these German patents, did you take into consideration the advisability of learning what the chemical industry in the United States, such as it was, desired in the matter?

A. Yes.

Mr. Anderson: I just want to note an objection, if your Honor please, to this examination, as being very leading. I think it would very much relieve the necessity for my objection if counsel would ask this gentleman, whose knowledge and ability is beyond question, to say what he did do rather than to state what he did and ask him to say yes or no.

Mr. Kresel: I have to lead up to it.

The Court: I think the leading questions are not detrimental. They save time. But I am going to sustain the objection and ask Mr. Kresel to sacrifice the time and present this testimony in a non-leading form.

Q. 165. Mr. Palmer, you are familiar with the charges in this bill of complaint? You have read it?

A. I have read it.

Q. 166. Substantially, the allegations in the bill are that beginning about June, 1918, certain named corporations and individuals, trade associations and others not named, entered into conspiracy to induce you as Alien Property Custodian to seize those German patents; and further, the conspiracy was to organize a corporation and to induce you as Alien Property Custodian to sell these patents to that corporation, which it is alleged the conspirators were to control, and thereby the conspirators were to perpetuate a monopoly of the chemical industry which it is alleged they had already obtained. I am going to ask you whether, prior to the organization of The Chemical Foundation, which it is in evidence was incorporated on the nineteenth day of February, 1919, you ever met any of the representatives of the American Dyes Institute, the Textile Alliance——

Mr. Anderson: Mr. Kresel, the name of the Textile Alliance has been stricken out of the bill.

Q. 166. (Continuing.) Or the Manufacturing Chemists' Association, and whether any of them or any of their representatives spoke to you or made any representations to you with reference to these German patents?

A. I never met any of the gentlemen connected with those institutions so far as I know; and none of them ever said a word to me about these German chemical patents or any other patents.

Q. 167. Some of the other corporations that are mentioned are the National Aniline & Chemical Company, the General Chemical Company, the Solvay Process Company, the Semet-Solvay Company, the Barrett Company, E. I. duPont de Nemours & Company. As far as you know, did any representatives of

any of these companies approach you or make any representations to you with reference to these German patents?

A. None whatever.

Q. 168. Mr. Morris R. Poucher is particularly named in the bill of complaint as the representative of these interests and it is alleged in the twenty-third paragraph of the complaint "that these firms, corporations and associations, through their representatives aforesaid, and especially through said Morris R. Poucher, urged upon said Alien Property Custodian and his assistants" and so on, "the pretended necessity for the protection of American industry of securing control or ownership of said enemy-owned patents, and urged upon them their pretended duty in the public interest to seize, sell, or dispose of the same." Up to the time of the organization of The Chemical Foundation, had you ever met Mr. Poucher?

A. I never had met Mr. Poucher.

Q. 169. Have you met him since?

A. I have met him since.

Q. 170. When was the first time you ever met him?

A. Oh, long after I ceased to be Alien Property Custodian I met him for the first time.

Q. 171. But were you aware, as Alien Property Custodian, that your associates, Mr. Garvan, Mr. Choate, and Mr. Hoguet, were in touch with representatives of the chemical industry and discussing with them this question of the disposition of these German patents?

A. I was aware of it.

Q. 172. Did you instruct them to do that?

THE COURT: Colonel Anderson has intimated that he has an objection to your leading questions. This one is leading.

MR. KRESEL: I shall not argue about that. I do not think it is leading.

THE COURT: Maybe I am wrong. Colonel Anderson, do you object?

MR. ANDERSON: I think so, sir. I hope the Court will understand——

THE COURT: We will not discuss it. We will assume that it is leading.

Q. 173. Had you any talk with Mr. Garvan, Mr. Choate and Mr. Hoguet, or any of them, about the chemical industry in relation to these patents?

A. I had had talks with all of them, had told them what my purpose was in a very broad and general way, and left to them the working out of the details of a plan by which that broad purpose could be carried out. They were perfectly familiar with my plan, and they kept me familiar with their working out of the details.

Q. 174. Please state when it was that Mr. Garvan, Mr. Choate and Mr. Hoguet reported to you what progress they were making in this matter. I mean the first time that anything definite was reported to you?

A. I would say that their report to me of their plans taking some definite shape began to come late in January.

Q. 175. Of what year?

A. Of 1919, or some time in January of 1919.

Q. 176. Do you remember anything about a meeting held in your Washington office at which representatives of the chemical industry were present?

A. I remember about the meeting being held.

Q. 177. Do you know how that meeting came to be held?

A. Yes, I do.

Q. 178. Will you state how the meeting came to be held?

A. By that time, Mr. Garvan and Mr. Hoguet and

Mr. Choate, either one or all of them, had advised me that they had been in touch with representatives of the chemical industry, and that together they had discussed this problem from the viewpoint of my plan that I had announced to them.

Q. 179. May I interrupt you there. Did they say to you whether they had approached the industry or whether representatives of the industry had approached Mr. Choate, Mr. Garvan and Mr. Hoguet?

Mr. Anderson: If the Court please, I am constrained to object to that question. Mr. Garvan, Mr. Hoguet and Mr. Choate are available to testify in this case, and I do not think that the information and conversations between them about this matter, when they are available, should be given by the distinguished witness now on the stand; but if there are any written reports, I am perfectly willing that those reports should go in, subject to our general objection. But I do not think that these conversations are evidence.

Mr. Kresel: I do not understand the point of view of Colonel Anderson with reference to written documents. I do not understand the sanctity of a written document. A witness may state what was told him, whether subsequently there was a report made of it or no. As to whether conversations are admitted between Mr. Palmer and the other gentlemen, which I think is the real point of the objection, the Government has undertaken to put in here a vast amount of documentary proof of what statements were made by Mr. Hoguet to Mr. Palmer, and what Mr. Choate said to Mr. Hoguet. Why, the records are full of that. It seems to us that we are entitled to show what information Mr. Palmer had from those associated with him, upon which he took the action which I shall show he did take.

THE COURT: It seems to me that the evidence is clearly admissible and that the allegations of the bill charge that a certain Government official (I think it was Mr. Palmer) was deceived. Now, whether he was deceived is a question that makes it necessary to know what representations were made to him by Mr. Choate, Mr. Hoguet and Mr. Garvan. An independent inquiry is, I take it, whether they did or did not approach the representatives of the manufacturers or sales organizations of the dye and chemical industry in this country; but another and a separate and an independent inquiry is as to the representations those persons made to the Alien Property Custodian. I think the objection should be overruled and the answer should be taken.

A. You understand, I laid out a plan in a broad way of what we desired to accomplish, and I sent these gentlemen, who were my representatives, out to work out the details and bring me back a perfected plan for my consideration. I instructed them to do what was necessary to work up that kind of a plan.

When I first learned of the interest of the representatives of the industry in the plan, it was my understanding that that was in response to my instructions to my representatives to consult with the industry and with everybody that might be interested, to aid them in building up such a plan; and they went to the representatives of the industry for the purpose of seeking assistance and ideas and suggestions as to the practical working out of a plan to accomplish the purpose which I had in mind and had announced to them. I think you originally asked me how these gentlemen came to attend the meeting.

Q. 180. Yes, I am coming back to that.

A. All right.

Q. 181. You speak of the general plan that you

had laid out, giving instructions to Mr. Garvan, Mr. Choate and Mr. Hoguet to work it out in detail. I am going to ask you to state what the general plan was that you laid out to them?

MR. ANDERSON: I think I asked if that was not presented in writing, awhile ago, and he testified that that was his policy and plan of the 13th of January, a memorandum.

MR. KRESEL: No, that was not the plan at all.

MR. ANDERSON: Modified by letter from Mr. Hoguet?

MR. KRESEL: No.

Q. 181 (continued). Mr. Palmer, will you answer the question?

A. The information that I had received had impressed me with the importance of several things in relation to this chemical patent business, all of which were factors in the working out of the problem. The tremendous development of the chemical science and industry for war purposes, as the war had demonstrated, made the chief and largest impression upon my mind. The absolute necessity, as demonstrated by Germany, of having a war industry in this country—I mean having a chemical industry in this country, if we were going to be adequately prepared for the kind of wars the last war showed the next war to be, led me to declare that we must work out some plan by which this German grip upon the chemical industry, so far as it applied to America, must be transferred to a new American industry under such conditions as would safeguard the Government in the use of every product of the chemical industry which it might require for its own safety and protection in the future; that it ought to be built up and developed in such a way that the Government could constantly have the benefit of it.

That was the one broad phase of the plan that I laid down to these gentlemen. The other was, and it

was not my own entirely, but largely the result of the Federal Trade Commission's views and of what I knew to be the general policy of the administration, that in the building up of that industry a plan had to be worked out by which it should be a competitive industry and no monopoly should result from it.

Now, those were the two big ideas. It was all nebulous in my mind. It was very general and very broad. The purpose was plain. We wanted to build up an American industry in order that the Government and the people should benefit from it. We wanted to do it in a way that would make that absolutely certain forever and in a way that would not result in monopoly. Now, with that broad and general plan these men went out and tried to work out the plan.

Q. 182. I am coming back to that meeting about which I questioned you. I asked you whether you could state how the meeting came to be held. In other words, who called it, if you know?

A. Yes. Well, I asked either Mr. Choate or Mr. Garvan, who told me that these gentlemen had been discussing the matter together and with them and that they had ideas upon the subject which they would like to have me hear and discuss with them.

In response to that statement or report, I asked Mr. Garvan or Mr. Choate, I do not know which, to say that I would be glad to see them, and ask them to come down to Washington in a body so that we could make it as brief as possible, and let them all state their views to me. A day was fixed and they accepted the invitation, a large number of them, several, and came. Unfortunately, when they got there I was ill at home and unable to leave the house; so that I asked a report of everything that was said at the meeting be made and submitted to me, and a stenographic report was made and given to me the next day.

Q. 183. I show you Plaintiff's Exhibit No. 28,

which is a report of this conference. I do not ask you to read it through, but just glance at it and state whether that is what was submitted to you as a report of what took place at this meeting?

A. Yes.

Q. 184. And did you read it?

A. I did.

Q. 185. I notice that according to the minutes of this meeting there were present representing the Alien Property Custodian, besides Mr. Choate and Mr. Hoguet, Mansfield Ferry. What was his position?

A. He was then general counsel for the Alien Property Custodian.

Q. 186. And F. J. Horne; what was his position?

A. He was then director of one of the bureaus.

Q. 187. And Mr. W. T. Gordon?

A. I think Gordon was the chief of the Patent Division. I am not sure. I can't remember what position he held. He was a part of the organization somewhere.

Q. 188. After you read the report of the proceedings of this meeting, did the suggestions made therein meet with your approval?

A. You mean the suggested plan for the formation of a corporation?

Q. 188 (continued). Yes.

A. Yes. I had discussion about it before I announced any approval of it.

Q. 189. With whom?

A. With Mr. Garvan and Mr. Choate.

Q. 190. And then did you give them any further instructions?

A. Yes, I told them to go ahead and work out the plan along that line.

Q. 191. Do you remember receiving this letter from the American Dyes Institute dated February 7, 1919, which is now Plaintiff's Exhibit No. 30?

A. I remember that letter. I have seen it.

Q. 192. Do you remember receiving with that letter a report of the Executive Committee of the American Dyes Institute, which is marked Plaintiff's Exhibit No. 29?

A. Yes, sir.

Q. 193. And subsequently there was a letter written by the American Dyes Institute which substituted another report for this one. Do you recall that?

A. I recall that; but I think from the original letter the wrong report had been sent.

Q. 194. All those communications were brought to your attention, were they?

A. They were.

Q. 195. And you saw from those what the plan was as to the organization of a corporation to take over these patents?

A. Yes, sir.

Q. 196. And did that meet with your approval?

A. It did.

Q. 197. How soon after the enactment of the amendment of November 4, 1918, did you begin to seize German patents; I mean, demand and seize German patents?

A. Immediately.

Q. 198. And when you discussed with Mr. Hoguet and Mr. Choate and Mr. Garvan your plan and instructed them to consider how it could be effected, were you at that time seizing German patents?

A. We had at that time seized a large number.

Q. 199. Colonel Anderson calls my attention to the fact that I am in error in speaking of conferences between yourself, Mr. Choate, Mr. Garvan and Mr. Hoguet. His recollection seems to be that you did not represent Mr. Hoguet in those conferences. Am I wrong about that?

A. Oh, yes, I did. I certainly intended to.

Q. 200. That was my understanding about it?

A. I will not say that the conferences consisted of the four of us.

Q. 201. At all times?

A. At all times. I was in the habit of holding conferences with every one of them. We had them at all hours of the day and at all places. Frequently I would see Mr. Hoguet by himself, frequently Mr. Choate, frequently Mr. Garvan, and sometimes all of them.

Q. 202. Will you state how soon after the sale of the Bayer plant, which as I recollect your testimony, you said occurred in December, 1918, you had the first of these conferences with your associates at which you discussed the necessity of making the disposition that you have outlined and discussed this plan?

A. The very first one was immediately after the sale and was with Mr. Garvan. Whether it was the next day or two days after, I do not remember; but the thing was the freshest thing in our minds at the time.

Q. 203. But the proposition began to be discussed immediately after the Bayer sale?

A. Immediately.

Q. 204. As plans were being perfected for The Chemical Foundation were you kept informed thereof?

MR. ANDERSON: I do not think he can answer that. I think he can say what information was conveyed to him, and when, but how does he know that he was kept informed of all information.

MR. KRESEL: I did not ask him whether he was advised of all the information.

THE COURT: I think the question is objectionable.

MR. KRESEL: I will withdraw it.

Q. 205. Did you have any information submitted to you about the organization of The Chemical Foundation before its incorporation?

A. Yes.

Q. 206. Will you state what information in that respect was submitted to you, by whom and when?

A. Well, Mr. Garvan reporting for the three of them as to what had been done was telling me every time I saw him about what progress had been made in the organization or the proposed organization of the institution which we had planned. He told me when they had settled upon the name and what the name was to be. He told me when they came to a final agreement as to how much the capital stock would be, and these agreements were all tentative, subject to my approval, as he explained to them, and that is the reason he was reporting them to me. He advised me of the plan for the number of directors to be had. He advised me when it was suggested to him that he should be president of the company, saying that he was disinclined to accept it because he was tired of this job and wanted to get out, and I very earnestly and strongly urged him to accept it.

I think it was entirely upon my insistence that he did so. I was advised by them that the preparation of the charter itself was in the hands of Judge Ingraham, who was on our Advisory Sales Committee and had been Judge of the Appellate Division, I think, of the Supreme Court of New York, and of Judge Gray of Delaware, and they submitted to me several drafts, a couple of drafts, I do not know how many, of the proposed charter for my suggestion or criticism, approval or disapproval. I think I may say that I watched every detail with all the care that I could and we realized or thought we realized we were doing a big thing, and we wanted to do it with care and think of everything we possibly could think of to safeguard the interests of the country and make certain the carrying out of our purpose. So we counseled together constantly. I think

these gentlemen told me everything they were doing and we exchanged our minds on the subject.

MR. ANDERSON: I move to strike that out.

THE WITNESS: Well, I know they did.

MR. ANDERSON: He could not know that they told him everything; it is a physical and mental impossibility.

MR. KRESEL: If counsel for the Government desires to have that answer stricken out I will consent to it.

THE COURT: Just what portion?

MR. KRESEL: That portion wherein he said "these gentlemen told me everything."

THE COURT: Yes.

Q. 207. Did you know it was a part of the plan that Mr. Choate should be the general counsel of the new company?

A. I certainly did.

Q. 208. Did you know that it was the plan that Mr. Hoguet was to be the patent counsel of the new company?

A. I did.

Q. 209. Did you know that it was the plan to have a voting trust covering the common stock of the company?

A. I did.

Q. 210. Did you know that it was the plan that the common stock was to be the voting stock of the company?

A. Yes, I knew that.

Q. 211. Did you know that it was the plan to have this voting trust extend—well, I won't lead you. How long to your knowledge was it the plan to have the voting trust extend?

A. Well, our plan was to make it extend long enough to cover the life of the longest lived patent that

we took over and sold to The Chemical Foundation, which was seventeen years.

THE COURT: We have reached a point now where we probably could suspend.

I have to take up some other matters. There is one question I want to ask. I am not suggesting its materiality, and I do not know whether it may be material or not, but it has been referred to several times. That is the importance of the chemical industry in America to a possible further war as essential for the protection of America. I do not want to unnecessarily go through the question whether I may take judicial notice of that at the time I am writing the opinion, and if either side deems it material, I hope they will show the reasons for that, rather than let me spend a half a day or so examining the authorities.

MR. KRESEL: May I state to the Court that it is our purpose to put in proof upon that point.

THE COURT: I do not want to have to be troubled with the question of whether I should take any judicial notice of that, if it becomes material. I do not know whether it is material or not.

MR. KRESEL: One more thing, if your Honor please; I am informed that Defendant's Exhibit 32-D is already in evidence as Plaintiff's Exhibit No. 5. Therefore, I ask leave to withdraw Defendant's Exhibit 32-D.

THE COURT: Let it be withdrawn.

MR. ANDERSON: What is 32-D, may I ask?

MR. KRESEL: It is one of the Executive orders.

(Whereupon, at 3.30 o'clock Standard Time, an adjournment was taken until Friday, June 29, 1923, at 8.30 o'clock a. m., Eastern Standard Time.)

EIGHTEENTH DAY.

Wilmington, Delaware, June 29, 1923, at 8.30 o'clock a. m. Standard Time

Before:

HON. HUGH M. MORRIS, *U. S. District Judge.*

Counsel present as before noted.

TRIAL RESUMED BEFORE THE COURT.

MR. KRESEL: If your Honor please, the last exhibit that I put in yesterday was Defendant's Exhibit 44. My attention is called to the fact that that document is already in as Plaintiff's Exhibit No. 453. I therefore desire to withdraw Defendant's Exhibit 44.

THE COURT: Let it be withdrawn.

A. MITCHELL PALMER, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

Q. 212. Mr. Palmer, I asked you yesterday about the relationship between the Synthetic Patents Company and the Bayer Company. Do you remember?

A. Yes.

Q. 213. With reference to the disposition of the Bayer patents you stated, as I recall it, that the Synthetic Patents Company was a subsidiary of the Bayer Company. Do you desire to make any correction in that?

A. I had first stated that the patents were largely owned by the same persons who were the owners of the stock of the Bayer Company, and you then asked me if there was not a subsidiary company, and I said yes. Strictly speaking, the Synthetic Patents Com-

pany was not a subsidiary of the Bayer Company. It was, I might say, an affiliated company. It was a corporation formed for the purpose of holding and exploiting patents and it owned most of the patents which the Bayer Company used. The stock of the Synthetic Patents Company was not owned by the Bayer Company, but by the German interests who owned the patents and the stock of the Bayer Company.

Q. 214. And did you seize the stock of the Synthetic Patents Company?

A. Well, I took it over. In the early days we did not seize. We demanded and received. We got to seizing later on.

Q. 215. And when you made the sale of the Bayer property, did you at the same time and as a part of that transaction sell the stock of the Synthetic Patents Company?

A. Yes, at the same time, in the same sale, to the same purchaser.

Q. 216. I now, Mr. Palmer, desire to question you with reference to the order made by Mr. Polk, dated February 26, 1919, which has already been put in evidence, authorizing the sale of these chemical patents to The Chemical Foundation. I should like you to state what conferences, if any, you had with Mr. Polk, with reference to the making of that order, giving the time, if you will, and who was present?

A. I first went to see Mr. Polk on the morning of February 26th at his office in the State Department and found that he was engaged, I think, at the White House. I waited for him for a time. He did not return and I could not wait any longer; so I went back to my office and wrote him a letter enclosing the Executive order, a draft of the Executive order, and enclosing also part of my report which was then ready for transmittal to the President.

Q. 217. What part was that, may I interrupt you?

A. What is that?

Q. 218. What part was that that you enclosed?

A. That portion of the report which had to do with chemicals, Chapter 2, I think it is, in the report; and I marked with pencil marks on the report the portion that I particularly desired him to read. Later in the day I got in touch with him and saw him and we had a conference at his office in the State Department.

Q. 219. Before you proceed to state the conference, I show you Plaintiff's Exhibit No. 90 and ask you whether that is a copy of the letter you say you wrote to Mr. Polk, with which you say you sent him the proposed Executive order and the portion of your report?

A. It is.

Q. 220. Will you proceed, please?

A. At this conference I repeated to him what I had said in the letter; and in addition to that went very fully into the chemical situation, describing to him at least all the high points in the report which we were making, which showed the facts and the history of the German control of the chemical industry, sketched its importance to the country and to the Government, and outlined to him in detail the plan that I had devised of selling these chemical patents to The Chemical Foundation; describing what The Chemical Foundation was, what our understanding with it was and the cash price which was to be received for the transfer of the patents to the Foundation and the other considerations which had moved me in making the sale.

I remember that our talk was longer than I expected it to be, because to my surprise and satisfaction, Mr. Polk was intensely interested in the thing

and had a great deal of knowledge about it himself which he seemed to have acquired from other sources and we discussed it at length. He signed the order.

Q. 221. In this letter Plaintiff's Exhibit No. 90 I find this concluding paragraph: "I would go to the President about it, but you know the situation at the White House and I see no reason why you should not make the order." Will you state what you were referring to there, as to the situation at the White House?

A. Well, the President had just gotten back to the White House I think the evening before. We all knew he was going to stay only until the 4th of March, and everybody around him was trying to save him as much as possible. He did not have time to do the hundredth part of the things he was being called upon to do and we who were the heads of various departments in the city were all endeavoring to save him everything possible. It was only that which led me to say to Polk, who knew exactly as I did and who was trying to do what I was trying to do, save the President everything possible, that he should sign the order.

Q. 222. Your report to Congress, which is Defendant's Exhibit 30, was made as of the close of business February 15, 1919. Do you recall that?

A. As of.

Q. 223. Yes.

A. Yes, sir; as of the 15th of February.

Q. 224. The letter of transmittal to the President is dated February 22, 1919. You testified yesterday that notwithstanding the date of the letter, the report was not actually sent to the President until the 27th of February, 1919?

A. Yes, sir.

Q. 225. In your report, speaking of the transfer of these patents to The Chemical Foundation, you say: "By Executive order obtained under the provisions of the Act, I have sold to this company for the sum

of $250,000 approximately 4500 patents," etc. You say, "I have sold." At the time when you sent this report to the President, that is on February 27, had the transaction actually been made by you?

A. Yes.

Q. 226. The Executive order had been signed the day before?

A. Signed on the 26th.

MR. ANDERSON: I object, if your Honor please. The only evidence of sale by the Alien Property Custodian must be the written evidence. It is all a matter of writing. And therefore I wish to note, in addition to our general objection, the objection that this matter is a matter of writing, the contract between the parties is in writing, the transaction of sale is in writing, and cannot be varied by parol evidence.

MR. KRESEL: I think, sir, that this is as good a time as any to have an understanding about that. Quite true that the instrument of assignment was dated the tenth day of April, 1919; but it is our contention, and the evidence now is, that the sale, the actual sale, was made and agreed upon before the twenty-seventh day of February, 1919. I do not understand what Colonel Anderson means by his contention that a sale by the Alien Property Custodian must be in writing. An agreement to sell may be oral or may be in writing. The actual instrument whereby the transfer is made was in writing here, but that does not fix the date when the transaction was made. We contend that the transaction was made and completed by the twenty-seventh day of February, 1919, and while Mr. Palmer was still Alien Property Custodian. That is our contention.

MR. ANDERSON: In order to make the record complete, I wish to move to strike out all the

evidence of the witness as to the alleged sale and the date thereof, on the ground that the record in regard to this subject is in writing, whether required to be or not, the instrument of conveyance is in writing, and that speaks for itself and cannot be modified either as to date or otherwise by parol testimony or by the evidence of this witness. I mean, to add to that that the record of the sale is the assignment, and the date of the transaction and consummation thereof is the deed, and stated in the deed.

THE COURT: Is it your contention, Colonel Anderson, that Mr. Kresel cannot show the time when the agreement to make the sale was consummated; that is, as a separate matter or matter separate and apart from the consummation of the sale?

MR. ANDERSON: It is my contention, sir, that this whole matter is a matter of record; so far as of any force at all, binding upon both parties to the transaction; and that that record is conclusive and cannot be varied.

THE COURT: I am afraid I did not make my question clear, because what I had in mind was whether or not it is your contention that the defendant may not show when the agreement to make the sale and the details of the sale to be made were completed.

MR. ANDERSON: That is my contention in the face of this record, substantially. But the defendant has not undertaken to show that. He has just said it was prior to a certain date, and that date is prior to the date stated in the record evidence of the transaction itself; and I submit that that evidence in the first place, is too indefinite to mean anything, and in the second place, that it is wholly incompetent and illegal.

THE COURT: Is not the best evidence, Mr. Kresel, of the actual sale and the consummation of the sale, the assignment, or do you contend that the sale was a matter that consisted of the agreements which were entered into and binding, and that the assignment is the mere execution, or has merely the effect of an execution?

MR. KRESEL: Your Honor has stated my contention exactly. Our contention is that the agreement to sell, and the agreement as to all conditions of the sale were made before February 27, 1919.

THE COURT: Then I understand your contention. But is not Colonel Anderson's objection, even under that contention of yours, valid to the extent that you are asking the witness when the sale was consummated, which probably would be open to different interpretations? That is, if you use the word "sale" and the witness used the word "sale," without making clear as a fact that to which you are both referring by the use of the word "sale," the record is open, it seems to me, to the express objection of Colonel Anderson and also to such further objections as the objection stated may necessarily imply. I do not mean to say that the use of the word "sale" would be prohibited. I do not know that it would, if you have made clear what you mean by the word "sale."

MR. ANDERSON: Let me make myself clear, because this will probably become an issue and we might as well settle it here. What constitutes a sale is a matter of law to be concluded from facts. Certain transactions may be a sale and certain transactions may not be a sale.

It must appear who the parties were and that their minds meet in a contract. It must appear

that all of the legal essentials exist, and where it is a written transaction, by deed— and in this case I take it the law would require a written transaction or conveyance by the Alien Property Custodian—the deed is the only evidence of what took place so far as the actual transaction is concerned.

We shall most earnestly object to going into any prior negotiations as to the sale, but if the Court should even allow the prior negotiations, objection to which is covered by our former statement, then they must state only the facts of what took place and when they took place, to the end that it may appear whether or not there was such a transaction as this Court would hold to be a contract or a meeting of the minds and how far that contract would be legal.

THE COURT: I think you have stated it, Colonel Anderson, in a much clearer and better way than the Court tried to express it in the statement to Mr. Kresel a moment ago.

MR. ANDERSON: I did not know whether I made that clear to the Court; and I wanted to be sure.

THE COURT: Now then, after these facts are assumed, if the word "sale" should perchance be used, it will be understood, I take it, to mean that aggregation of facts rather than a conclusion of law which must be drawn by the Court.

MR. ANDERSON: Will your Honor rule on the motion to strike out?

THE COURT: That motion is denied on the undertaking by Mr. Kresel that he intends to supplement that by the facts which you have referred to in your last statement and also on the understanding that the word "sale" as used by him meant only that and is not a conclusion of

law. That was my understanding of your undertaking, Mr. Kresel.

MR. KRESEL: Yes, your Honor, quite right. I will come back to this point in a little while. I am not going to follow it up at this time.

MR. ANDERSON: I suppose your Honor will give me an exception.

THE COURT: An exception goes to all adverse rulings.

MR. ANDERSON: I move to strike the last answer out, about the signing of the Executive order, as not the best evidence.

MR. KRESEL: The motion is to strike out because he cannot give the date when it was signed?

MR. ANDERSON: I mean to say that the order speaks for itself as to the date of signing.

THE COURT: What is the date of the order?

MR. KRESEL: The 26th of February.

MR. ANDERSON: I think it is the 26th. I am making this objection, if your Honor please—and I do not want to be captious, but in reading over this evidence yesterday it seemed to me that I probably was—well, not as careful as I should have been, and I certainly do not want to yield any rights here. But I do not want to be captious, I am trying not to be.

THE COURT: I did not know you were open to that criticism.

MR. ANDERSON: I am glad that your Honor does not think so, but I felt so; because I think, not in criticism at all, that a very large proportion of the evidence was elicited in answer to questions so indefinite and general as to be clearly objectionable on that ground according to my view, submitting of course to your Honor's better judgment and knowledge, and also that the answers were not responsive but were argumentative rather than direct responses to questions

of fact. I do not wish to be unreasonable, and do not wish to be unpleasant in this trial, especially with this witness on the stand, but I do wish to ask that in the conduct of these examinations we conform to the rules of evidence to the end that I may make objection and take exceptions in the proper way. So far as this particular matter is concerned and its materiality, if the answer is that it was signed on the 26th I do not care so much about it and I will withdraw the motion as to that, but I made the objection for the purpose of raising the leading question.

Q. 227. Mr. Palmer, I think you testified that you became Attorney General on the 4th of March—or 5th of March, you said?

A. On the 5th of March.

Q. 228. 1919?

A. 1919.

Q. 229. Shortly before that time did you see President Wilson?

A. Yes.

Q. 230. When was it you saw him?

A. Do you mean when I saw him last before that time?

Q. 231. Yes, please.

A. The evening of the 3d was the last time I saw him.

Q. 232. The evening of the 3rd of March, 1919?

A. Yes, sir.

Q. 233. At that time did you discuss with him the sale of these patents to the Chemical Foundation?

A. Yes.

Q. 234. I wish you would state now fully as nearly as you can, the conversation between the President and yourself upon that subject?

Mr. Anderson: For the sake of the record I wish to renew my objection as to this conversa-

tion, and base it with your Honor's permission upon the reasons stated yesterday so that I will not prolong the statement by a repetition.

THE COURT: The purpose, as I understand it, being to have the witness state particularly the information imparted by him to the President?

MR. KRESEL: Exactly.

THE COURT: And such statements of the President as will indicate what knowledge the President had of the matters here in controversy?

MR. KRESEL: Exactly, sir. It is to meet the allegation that the President, when he made the subsequent order, was acting in ignorance of all the facts.

THE COURT: I will take the answer.

MR. ANDERSON: Your Honor will understand that the objection includes the general objection of immateriality and irrelevancy.

THE COURT: I understand the objection to all testimony taken by either side includes all objections that are indicated by the opening statements of counsel and any specific objections made by counsel prior to the objection to the immediate question; and exceptions go without so stating, in each instance, to all adverse rulings. You may answer, Mr. Palmer.

A. Late in the afternoon of March 3, 1919, I called at the White House and saw the President, and spent about an hour with him. I explained that in view of my appointment as Attorney General I would place my resignation as Alien Property Custodian in his hands, and suggested that the business of the office required that somebody be immediately appointed to succeed me. He asked me if I had any recommendation to make as to my successor. I told him that I unhesitatingly and very strongly recommend that he

appoint Mr. Francis P. Garvan. I then explained to him who Mr. Garvan was, what his duties had been in the Alien Property Custodian's office, and the large extent and great value of his service in that office. I explained to him that I recommended him particularly, because, as I conceived it, the greatest and most important piece of work that we had on hand was the final actual consummation of the Amerizanization of the German chemical patents, and Garvan was more familiar with this situation than anybody in the country, had agreed to become President of the Chemical Foundation which was the instrument that we had created for the purpose of diverting these German chemical patents into general public use for the public benefit in this country, and I considered that so important a piece of constructive work on the part of my department that I was sure that if he agreed with me Garvan was the man to complete it.

I explained to him again what the chemical situation was, talked to him at length about the Chemical Foundation and what its purposes were, what we had in mind, the great work it could do in being the means of building up a great chemical industry for the advantage of the Government and the people.

MR. ANDERSON: Just one minute, Mr. Palmer, if you please. If your Honor please I shall now interrupt the witness, to move to strike out the statements of the conversation with the President, on the ground in addition to those already stated that it is stating merely conclusions, and if a conversation took place and is to be recited, he must recite as nearly as possible what was said and what was stated. Everything is stated as as a conclusion, a view, an argument, and if the conversation is to be allowed the actual facts stated to the President and what the President actually said or the substance of what the Presi-

dent said should be given, and not the conclusion of the witness or the effect of it.

MR. KRESEL: I must say, your Honor, that I do not think that the witness's answer up to the present is subject to any such criticism, and I am sure that Mr. Palmer is giving his best recollection of what was said between him and the President.

MR. ANDERSON: I am not denying that. I am not denying that at all, but I mean to say that it is merely the effect of his conversation and not what was said or the facts stated. There has not been a single fact stated. Permit me to illustrate, if your Honor please. How in the world can I meet any evidence of this kind, assuming that I was going to try to meet it.

Suppose it was a conversation with the witness that I could give; the witness stated that he stated to the President the situation with respect to the chemical ind ıstry in the United States; that he stated to the President the plans that they had for the chemical industry in the United States, and so on. I might go on and recite his statements. Now, those are perfect conclusions as to what he stated, the effect of conclusions as to what he stated in his own mind, and not facts upon which an examination could take place or evidence could be adduced to meet a fact.

MR. KRESEL: But, Colonel Anderson, you did not wait until the witness had finished his answer.

MR. ANDERSON: But I objected to that part.

MR. KRESEL: Pardon me a minute. For all that appears, he may have gone on to say exactly what he did tell the President about the Chemical Foundation, exactly what he did tell him about the chemical industry. Now let him finish the answer.

If by that time he has not stated fact, then I can see some force in the point that you are raising.

MR. ANDERSON: A statement of facts is the only thing that can be stated at all. Up to this time it has been a statement of conclusions. Therefore, I thought it better and more courteous to object to the evidence at this time to the end that my objection might be known before the witness went on to make a long statement of that kind. I do not think the character of evidence that the witness is giving, with due respect to the witness, is evidence at all.

MR. KRESEL: Not at all. I do not agree with that. Suppose that all the witness had said to the President was, "I think this is important." Have I not a right to show that that is what he said to him?

MR. ANDERSON: If he said that, yes.

THE COURT: There may be some instances in the statement of the witness thus far in reply to the questions that are open to the objection of Colonel Anderson. I think it unnecessary for me to attempt to separate those from the others at the present time. It seems to me that the objection, Colonel Anderson, offered by you goes to the evidential value of the testimony, and I believe that we cannot finally weigh that evidential value until all the facts with respect to the answer of this witness have been had to the inquiry. You are not deprived by this ruling of the right to urge, at any time you see fit, the immateriality and lack of evidential value of any statements made by the witness.

MR. ANDERSON: I understand, sir. Without prolonged discussion, may I suggest to the Court this: that if I were trying to meet this evidence,

and it must be tested by that if it is admissible at all, would there be any possibility of my being able to meet as a fact the statement of the witness that he explained the chemical industry to the President of the United States?

MR. KRESEL: May I answer that, your Honor? Certainly, you could ask the witness, did Mr. Palmer on such and such a day explain to him the importance of the chemical industry.

THE COURT: It seems to me, Colonel Anderson, the question is admissible.

Q. 234 (continued). Will you proceed, Mr. Palmer?

A. I was simply trying to abbreviate——

Q. 234 (continued). Please do not abbreviate.

A. It will take me an hour to tell everything that took place in an hour's conversation.

THE COURT: You may take such time as may be found necessary.

Q. 234 (continued). Go on, Mr. Palmer.

A. I told him that at my instance the Chemical Foundation had been formed, and that it had been incorporated, and that the purpose of the Chemical Foundation, according to its charter and according to the agreement which we had with those who were organizing it——

MR. ANDERSON: I object to any evidence of agreement outside of the charter. The purposes of the corporation are fixed in the charter.

THE COURT: Colonel Anderson, this witness is not attempting to state as a fact what was in the charter; but he is stating what he told the President. If that is untrue, you will have an opportunity to meet it. You may proceed, Mr. Palmer.

(Answer to Q. 234 repeated as above recorded.)

A. (continued). ——was to issue non-exclusive licenses for these patents which were conveyed to the Foundation upon fair and reasonable terms to all persons or firms or corporations in the United States who desired to use the same, with the intention of building up a competitive chemical industry in the country.

That in addition to that it would do such other things as it might be able to in promoting and encouraging the building up of a general chemical industry in the country by educational means and otherwise. I did not have the charter before me and did not undertake to quote it exactly, stating only its broad purposes.

That the Government would be given a free license to use any or all of those German patents as might be necessary for Government purposes and that many of them, we believed, were of a kind which were highly important to the Government, in that the processes or products covered by them had been used by the Government during the war and would probably be used again by the Government both in peace and in preparation for another war or in another war, and that that, we felt, was a very large and important consideration, that the Government should have this free service.

I explained to him further that it was not a money-making proposition in any sense and that nobody was going to be permitted to make any money out of it; that we had, after much effort, succeeded in getting persons who were in the chemical lines of business in the country, a large number of them, to subscribe for the stock of the Chemical Foundation, with the understanding, which was to be amply secured, that in no event should their investment ever return them more than 6 per cent. per annum; that all earnings of the Chemical Foundation growing out of royalties on patents in excess of 6 per cent. per annum to the stockholders should be and must be used in general research

work and other work which in the judgment of its Board of Directors might be necessary to encourage and promote the building of a chemical industry in the United States.

I told him that in order to secure these purposes and to make certain that all of our plans were carried out not only in the letter but in the spirit in which they were conceived, I had made it a condition that the organization as it started should be named by myself, that its personnel should be of those who had been particularly and intimately associated with the work of investigating the German hold upon the chemical industry in America and those who by reason of that had collaborated with me most closely in building this organization and working out its plan and purpose.

I explained to him that that was the reason I thought Mr. Garvan ought to be president of the company and that I had directed that he should be elected. I told him that I had insisted with those who put up the money that, contrary to the usual plan, they should not name the directors or the officers, but I would do so and I would see that they were continued, by insisting that all future stock should be trusteed.

In order to make certain that that trust would be faithfully carried out and that our purposes would be executed by the voting trustees so far as they could, in the control of the corporation through the stock, I suggested as the voting trustees the five persons whom the President himself had appointed, most of whom he personally knew and who had served me as members of the Advisory Sales Committee during our sales program; and that that had all been agreed to and that Mr. Polk had signed the Executive order and the sale to the Chemical Foundation was an absolute, accomplished and finished fact.

Mr. Anderson: I object to the last statement, sir.

MR. KRESEL: That is what he said he stated to the President. You can't strike that out.

THE COURT: Do I understand, Mr. Palmer, that all you are stating now is what you stated to the President?

THE WITNESS: Yes.

THE COURT: What the witness is stating is not the conclusion that the sale was an accomplished fact, but he is stating that he so stated to the President. His whole testimony is merely of what transpired at this meeting with the President. Motion denied. You may proceed.

A. (Continuing.) And that my purpose in urging Mr. Garvan's appointment as Alien Property Custodian was quite largely in view of the fact that he had undertaken to be the president of this corporation and I knew he could be absolutely trusted to carry out its plans and purposes to the letter and in their full spirit. I would not have felt so safe in putting this plan over if I had not been able to pick out from my organization men of that kind who could and would operate it not only as we wanted it to be run but with a patriotic desire to serve their country.

I told him that Mr. Choate would also be associated with the company. I am not certain that I at that time told him the names of the directors. I do not know.

I had with me the commission in blank as Alien Property Custodian, and after this statement the President took the commission and with his own hand wrote the name of Francis P. Garvan in the blank which I had left for the name of the appointee, and I took the commission and handed it to Mr. Garvan that evening.

Q. 234 (continuing). Mr. Palmer——

A. (continuing). Now, if I am to tell all about this conversation, you will have to let me go on.

Q. 235. We will come to that in a minute.

THE COURT: I understood the witness to say that he had not completed the conversation with the President.

MR. KRESEL: I did not so understand. I thought he was speaking of the conversation with Mr. Garvan.

THE WITNESS: Oh, no.

Q. 236. I wish you would continue the conversation with the President, because I was going to direct your attention to some portions of it.

A. From that talk we drifted into a more general discussion of the disposition of enemy property and I told him the amount of property which we had sold up to that time, in a general way. I cannot give now the details of what I told him as to the names of the properties and the amounts, but I remember that I made a report to him in a sketchy manner of our selling program and how it had been carried out and told him that I thought, with the program then on the way, when it was completed, that we would have rooted out of American industry and commerce the more obnoxious German interests and would have transferred them to American hands in line with our purpose in carrying out the act, and that I hoped the Peace Conference would make certain that that course of procedure with respect to the treatment of enemy property would be sustained and protected in the Treaty, and so forth. We had a discussion about the Treaty.

The President then said he thought it would be wise to have somebody representing the Alien Property Custodian at his side at the Peace Conference, somebody who was familiar with everything that we had done and the reasons for it and who was familiar also with the plan which I had outlined to him for the purpose of providing for and advising with Congress as to the future disposition of this enemy property.

He asked me if I had such a man who was available and who could be of service over there. I told him I had. He asked me who it was. I suggested Mr. Bradley W. Palmer. Mr. Palmer is no relation of mine. He is a Boston lawyer with the firm of Story, Thorndike, Palmer & Dodge, one of the leaders of the Boston Bar, who had been working in the Alien Property Custodian's office at a dollar a year, having charge of some of the more difficult problems which we had to handle, who was entirely familiar with the whole work of the Alien Property Custodian; and I recommended to the President that he be chosen. The President said that he would be glad if I would ask him to come to Paris at once. I saw Palmer that evening and in forty-eight hours he was aboard ship, Paris bound, and stayed there until the Treaty was signed.

We had some discussion also about the importance of the chemical industry in war and I told him of the developments which had come to my attention during the war, especially in Germany, where the dye plants——

MR. ANDERSON: Just one moment, Mr. Palmer. If this evidence is intended purely as a statement of what the witness said to the President, under your Honor's ruling, I recognize that it goes in. If it is intended as evidential of any facts as to the chemical industry in the war, I wish to oject.

THE COURT: I assume it is not offered for that. The purpose of this, as I understand it, is to meet the allegation of your bill that the President was ignorant of what he was doing. What did you state your contention was, Colonel Anderson?

MR. ANDERSON: I stated if it was merely evidence that the witness said these things to the President, whatever he said, then under your Honor's ruling, subject to my objection, I of

course do not wish to interrupt him. If it is intended to be used as evidence of the facts which he stated, then I do object and wish to be heard.

THE COURT: As I understand it, what the witness is now detailing is offered merely and solely as a conversation between the President and the witness and is not offered as proof of the facts so stated.

MR. KRESEL: That is the purpose, your Honor. Of course, some of the things that he told the President, he knew of his own knowledge, and as to that, those were facts.

THE COURT: No, I do not so understand this statement of the witness.

MR. KRESEL: This coming statement?

THE COURT: No. that any statement the witness may have disclosed to the President is evidence of anything more than a mere disclosure. If you want to get from this witness whether the statements made by him were true or otherwise, you will have to get that on independent questions and not now.

MR. KRESEL: All right, your Honor.

THE COURT: Is that your contention, Colonel Anderson?

MR. ANDERSON: With that limitation, of course, I will not interrupt to renew the objection, because it is limited to merely what he said to the President. Whether they were existing facts or not is a question to be determined later.

THE COURT: Correct.

MR. KRESEL: Will you proceed, Mr. Palmer.

MR. ANDERSON: I am compelled to call the attention of the Court to the fact that the knowledge that had come to his attention, and the importance of the German industry in war, is hardly a statement of a fact. It is a statement

that he had a lot of information, but what it is does not appear on this record.

THE WITNESS: I was going on to say what it was.

Q. 237. Will you go on, Mr. Palmer.

A. —which information was to the effect that the great dye factories along the Rhine, which during the war had been combined into one great institution under state guidance, if not control, had been converted during the war into practically munition plants; the by-products of the industry being of great value and importance in the manufacture of high explosives and noxious gases which the Germans had employed to a great extent in the war.

I expressed the opinion to him that we could never hope to equal that sort of performance, if we ever had to, unless we had a chemical industry of our own in this country; that my information had been that the Germans had a practical monopoly of it not only in Germany but in the world and certainly in America and that the way to break that monopoly was to carry out the plan that I had worked out.

In explanation of the manner in which they had been able to control the American monopoly, I explained to him that all of these patents which we had seized had been taken out by the Germans not for the purpose of promoting the development of the chemical industry but for impeding it and that as a general proposition they were used to keep down and destroy the industry in this country, rather than to build it up, in order that the German products might come here and control the market; that that was an additional fact which, in the history of these patents, had led me to have little compunction about taking them from the Germans and selling them to American interests. He was very familiar with the progress of the development of chemistry in the war.

THE COURT: Just a moment.

Q. 238. Did he state that?

THE COURT: Let us strike that out. Colonel Anderson indicated that he had an objection to that last sentence.

THE WITNESS: I am sorry.

THE COURT: I think the objection to that sentence is well taken. Will you strike it out. That is the statement that he was very familiar.

THE WITNESS: Do I understand it is improper for me to say what the President said?

THE COURT: Probably unconsciously, Mr. Palmer, you stated that the President was very familiar——

THE WITNESS: I meant to say he said he was familiar. Whether it was true or not I do not know.

He said he was familiar with the progress of chemistry on the other side, in the development of munitions particularly, and as I recall it, he told me he had publicly talked about it. But my recollection is not very definite about it. I think that about covers it, sir.

Q. 239. Did you in this conference with the President mention the number of patents approximately that were sold to The Chemical Foundation.

MR. ANDERSON: I object to the question as leading.

MR. KRESEL: After the witness has exhausted his recollection, I have a right to ask him that.

THE COURT: Objection overruled.

A. I certainly did. I knew about what the amount was, and I told him all about it.

Q. 240. What did you state to him upon that subject?

A. That there were all told perhaps more than four thousand of these patents.

Q. 241. And did you mention to him the cash price that was to be paid by The Chemical Foundation?

A. Yes, I said that, I think.

Q. 242. I do not recall your saying; but will you say it now?

THE COURT: He did cover that in his statement. You may get him to repeat it, if you desire.

MR. KRESEL: I do not recall it.

Q. 242. (Continued) You did tell the President that?

A. I told him the amount of the capital stock of The Chemical Foundation and $250,000 of it was to be used for the purpose of paying a cash consideration for these patents.

Q. 243. Did you mention to the President at that time your report?

A. I do not know. I cannot recall. It was then in his hands or had been transmitted by him to Congress.

Q. 244. In connection with that part of the conference referring to Mr. Bradley W. Palmer, I show you copy of a cablegram from Mr. Palmer in Paris, and ask you whether that cablegram was brought to your attention at or about the time of its receipt?

A. Although this was after I left the Alien Property Custodian's office, it was brought to my attention, as were all the messages from Mr. Bradley W. Palmer at the Peace Conference. They were all shown to me.

MR. ANDERSON: I ask to strike out the last part of it and make the answer responsive to the question, for two reasons——

MR. KRESEL: You do not have to assign any reasons. I will consent rather than have your reasons. I now offer in evidence this cablegram from Mr. Palmer.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 44." (*See Exhibits, Vol. IV, page 2312.*)

MR. ANDERSON: Have you the original of that?

MR. KRESEL: I haven't it here. I suppose it is available. Would you like to see the original?

MR. ANDERSON: No, I will not object to the introduction of the copy but I would like to see the original.

MR. KRESEL: I will see if I can obtain it.

MR. ANDERSON: You understand I am not objecting to the introduction of this.

MR. KRESEL: I understand.

MR. ANDERSON: But I would like to see the original.

MR. KRESEL: Your Honor, this is a cable dated Paris, April 23, 1919, and reads as follows: (Reads Exhibit.)

Q. 245. I now show you a copy of a cablegram sent by Mr. Garvan to Mr. Bradley W. Palmer in Paris, and ask you whether that is the answer to the cablegram just read, and whether it was brought to your attention at the time of its despatch? (Handing witness.)

A. It was, and that is the answer.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: Have you the original of which that is a copy?

MR. KRESEL: I suppose that is available.

MR. ANDERSON: I would like to see it.

MR. KRESEL: Colonel Anderson, my information is from the gentlemen who know that all these cables, or the original and copy of these two I am just introducing are in the State Department files; and you will recall, of course, that you put in here a portion of this very cor-

respondence. I think I should like to have all the rest of it produced from the State Department files. I just happen to have these two, there may be others I would like to use. May this be marked now.

Received in evidence and marked "Defendant's Exhibit No. 45." (*See Exhibits, Vol. IV, page 2313.*)

MR. ANDERSON: If you will specify, Mr. Kresel, exactly what you want I shall make every effort to get it from the State Department if it is in its files. I cannot bring the whole State Department files of the Peace Conference correspondence.

MR. KRESEL: No.

MR. ANDERSON: You have had access to them.

MR. KRESEL: No, we have not had access to them.

MR. ANDERSON: I do not know how we can get those, because I have never seen them.

MR. KRESEL: I should like to have produced, if you will, all other cablegrams from Mr. Bradley W. Palmer during his stay there in Paris at the Peace Conference.

Now I will read the answer, your Honor. It is dated April 24, 1919, addressed "Ammission." That is American Mission, I take it. It is addressed to Paris, for Bradley W. Palmer, from Garvan, and in that connection I may say that Defendant's Exhibit No. 44 also has the words above "From Ammission." (Reads Defendant's Exhibit No. 45.)

Q. 246. Do you remember, Mr. Palmer, how soon after this conference with the President on the evening of March 3, 1919, the President left the country to go abroad again?

A. I think he left Washington on the evening

of March 4th and left New York on the morning of March 5th.

Q. 247. Do you know Admiral Grayson.

A. Very well.

Q. 248. Did you speak to Admiral Grayson before the President again left the country to go abroad, which you say was about March 4, 1919, with reference to your report, Defendant's Exhibit No. 30? Just say yes or no.

A. Yes.

Q. 249. Did you give Admiral Grayson a copy of your report?

A. I gave him two copies, as I recall it.

Q. 250. What did you ask him to do with reference to those copies?

MR. KRESEL: Do you object to that?

MR. ANDERSON: I do. It is subject to the same objection I have made to all these conversations.

MR. KRESEL: I mean do you object to it because it is hearsay; is that the point?

MR. ANDERSON: I do.

MR. KRESEL: Very well, I won't press the question. Does your Honor understand that there is objection to this?

THE COURT: Yes. I did not grasp the nature of the objection.

MR. KRESEL: Will Colonel Anderson state it then?

MR. ANDERSON: In addition to the general objection which I have already stated, I object to all of these conversations, and I do not care to repeat all that unless necessary. This is a specific conversation with an Admiral of the Navy, whose position, of course, we all know perfectly well; but it is utterly immaterial to this situation, and a conversation between Mr. Palmer and

Admiral Grayson is purely hearsay, and therefore I object to it in any event.

MR. KRESEL: Is there objection to my stating——

THE COURT: I know your purpose; you have stated it to me before. But the hearsay is what?

MR. ANDERSON: Of course, what he stated to Admiral Grayson probably is not hearsay but if he is going to ask for what Admiral Grayson said to him — if under your Honor's ruling this evidence is admissible I suppose he could state what he said to Admiral Grayson, but if you are going to follow up——

THE COURT: No, I am not sure it is, unless you are going to prove by Admiral Grayson a fact the nature of which was heretofore indicated in the several statements. Have you proposed to do that?

MR. KRESEL: I do, your Honor. I think, sir, I can clear it up by a letter which I am about to introduce.

THE COURT: Very well.

Q. 251. Did you receive a letter from Admiral Grayson, of which this is a copy? (Handing paper.)

A. I received a letter from him.

Q. 252. I would rather show you the original. Is that the letter you received? (Handing paper.)

A. Yes, this is the paper.

Q. 253. Do you know whether Admiral Grayson accompanied the President abroad on this trip?

A. He did.

MR. KRESEL: I offer this letter in evidence.

MR. ANDERSON: I object, if your Honor please. What Admiral Grayson wrote to Mr. Palmer is not evidence of what Admiral Grayson said to the President. Admiral Grayson is available, subject to the subpœna of this Court, and

if they want to introduce any evidence from him, they will have to call him and subject him to cross-examination.

THE COURT: Are you offering this letter for the purpose of showing that Admiral Grayson carried out the request made by him to Mr. Palmer? As I understand it, you have stated heretofore that Mr. Palmer made a certain request of a person who accompanied the President, and I suppose he is now identified as Admiral Grayson.

MR. KRESEL: Yes, your Honor.

THE COURT: Then is not Colonel Anderson's objection well taken?

MR. KRESEL: No, I do not think so. I think that we have a right to show that Mr. Palmer, through anybody (I do not care who the agent was), brought to the President's attention certain facts or certain documents (in this case it is a document), and my sole purpose in introducing this letter is to show that it was delivered to the President.

THE COURT: But there is my difficulty. You are not offering sworn evidence of the fact that it was so delivered and you are only offering the signed statement of the Admiral that it was so delivered: I assume; I know nothing about the contents of the letter. That, as I understand the rule on evidence, does not have evidential value. I am reasonably clear on that. I think the objection is well taken. If you have any doubt about it, you may put the letter in under our general rule.

MR. KRESEL: I have adopted in this case, your Honor will have noticed, the rule not to take advantage of your Honor's very generous offer to let either side put in anything although the Court does not think it is material. I will not do

that. I may later call Admiral Grayson; I may not.

Q. 254. Mr. Palmer, bearing upon the salvarsan patents, do you remember an interview that you had with Dr. Stieglitz?

A. Yes.

Q. 255. Do you know who Dr. Stieglitz is?

A. I have known him to be a very eminent man in the chemical profession, if you mall call that a profession. I do not know whether he is a teacher or an active man. I really do not know. I have heard of him.

Q. 256. Did he come to you with a letter of introduction from Governor Fort of the Federal Trade Commission?

A. I think he did come that way.

Q. 257. And is that a copy of the letter (handing paper)?

A. He came to see me on March 4th, that day. I assume that is the letter he brought. It is a letter addressed to me. I do not recall it.

MR. KRESEL: I offer the letter in evidence. Any objection to that?

MR. ANDERSON: No.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 46." (*See Exhibits, Vol. IV, page 2313.*)

Q. 258. Will you state briefly the conversation that you had with Dr. Stieglitz upon this subject of salvarsan?

MR. ANDERSON: I object, if your Honor please. I do not see what materiality there is in a conversation between Dr. Stieglitz and Mr. Palmer after he had resigned as Alien Property Custodian on the 4th of March, when he said he tendered his resignation.

THE COURT: I will hear Mr. Kresel, because I do not understand the purpose, Colonel Anderson, and then I will hear you further.

MR. KRESEL: We offer this evidence to show what information was conveyed to Mr. Palmer upon this particular subject. Now, while it is true that the information was conveyed to him on the 4th of March, which I think was a day after he had resigned as Alien Property Custodian, it is nevertheless material, in my view, under the allegations under the Bill of Complaint charging conspiracy on the part of the dye interests to induce the transaction which is being here attacked. When Mr. Palmer resigned on the 3d of March, 1919, as Alien Property Custodian, he did not sever his connection as an official of the Government. He became the law officer of the government. The plaintiff has introduced here numerous exhibits connecting Mr. Palmer with this transaction long subsequent to the third of March, 1919.

THE COURT: For instance, what exhibits? I do not now recall.

MR. KRESEL: Let me see if I can recall some of them. As I recall it, in the Flush Tank transaction there is a letter addressed to Mr. Palmer subsequent to the 4th of March, 1919. I wonder if I could get the number of that exhibit. That is only one. I think in this series of correspondence —what is the name of that patent?

THE COURT: I recall those early documents. they were received on March 26th as having been received on March 25th, according to your contention.

MR. KRESEL: Yes.

THE COURT: But I was unaware heretofore of their being sent to the witness.

MR. KRESEL: There is no doubt that some were

sent to the witness. Moreover, as I recall it—of course, there have been so many documents here, your Honor, that it is difficult to remember them all——

MR. GALLOWAY: Was that letter introduced in evidence, Mr. Kresel?

MR. KRESEL: Which one?

MR. GALLOWAY: The one in March to Mr. Palmer, after he became Attorney General.

MR. KRESEL: I think it was. I am trying to locate it now.

MR. GALLOWAY: I do not think it was.

THE COURT: I do not know; but the letters that I recall were two. Mr. Kresel called attention to the fact that they were stamped as having been received March 25th. I understand what you have in mind.

MR. KRESEL: May I also say this, your Honor: We shall show that when the Alien Property Custodian, Mr. Palmer's successor, gave to the Government a free license on some of the patents (I think that was in February, 1920), but which was subsequently cancelled by the big licenses, as appears from the terms of it, that was delivered to the Attorney General of the United States as the law officer of the Government and representing the Government. We will show that.

In other words, Mr. Palmer's connection with this transaction did not really cease on the third of March. In his official capacity as Attorney General of the United States he still had connection with this transaction, and in view of the broad charge in the complaint that he was induced by this conspiracy to do what he did do in connection with this transaction, I think we have a right to show all the information that was available to him, If it is not too remote.

Your Honor will see this is the very next day after he resigned, and as I recall Mr. Palmer's testimony, he did not actually leave the Alien Property Custodian's office until the fifth of March.

THE WITNESS: I continued to be Alien Property Custodian until I qualified as Attorney General on the fifth of March.

THE COURT: And this communication was when?

MR. KRESEL: Fourth of March.

THE COURT: I will hear you, Colonel Anderson.

MR. ANDERSON: I thought it would be the quickest way to dispose of this matter to simply say Mr. Palmer terminated his connection with this matter officially. That he continued to occupy the position of Attorney General, no one questions, but there is not a suggestion in this bill that anything Mr. Palmer did as Attorney General is in question here.

But supposing he had continued until 1920 or 1921 to be Alien Property Custodian, why is a conversation between Dr. Stieglitz, of Chicago, and Mr. Palmer admissible in this case, if Dr. Stieglitz is available to testify to any facts he knows, if he told to Mr. Palmer any facts relating to this matter?

Therefore, if they want to prove any facts in connection with the matter within the knowledge of Dr. Stieglitz, and I assume he would not have told Mr. Palmer anything that was not within his knowledge, the person to call is Dr. Stieglitz to prove what he knew at that time. But certainly a conversation between Mr. Palmer and Dr. Stieglitz is not the best evidence of the facts in this case.

THE COURT: The only difficulty that I have now that the time has gone to the fifth day of March, Colonel Anderson, is this: The judicial department functions only on sworn statements or agreed statements of fact. My information is that it is the only one of the three departments that does so function, or whose duty it is to so function. Now, whether this was a misrepresentation or a correct representation and a truthful representation to the witness, I am wondering whether he would not have a right to disclose the information which came to him upon which he acted, without having the burden put upon him of staying his hand until after he had had each representation supported in such a manner as to enable it to be received in a Court of Law.

MR. ANDERSON: If your Honor please, I am not arguing now that Mr. Palmer, as Alien Property Custodian, or as Attorney General, would have to have the information presented to him under oath or as a Court. I am not arguing that. I am reserving very earnestly my objections to these various conversations for the reasons which I have undertaken to outline and others which appear of record; but I do object to an attempt to prove a fact in Court by what Dr. Stieglitz told Mr. Palmer.

THE COURT: There is no need debating that, because I concede that you are right on that, and I assume that there is no dispute about that; is there?

MR. KRESEL: None at all. I am simply trying to show what information this witness had.

THE COURT: Whether it was correct or incorrect?

MR. KRESEL: That is a matter which if we do not show by other evidence the Government can

argue is not proof of the fact stated in the information.

MR. ANDERSON: I do not want to put the Government in the position that it must go through this record and argue as to each of these statements that they are not proof of the fact, if there is any claim that they are proof of the fact. That is the reason I am raising this objection.

THE COURT: Let me ask this question: as I indicated yesterday, and I have been considering it at all odd moments since, as to whether the inevitable conclusion to be drawn from your allegations, although in a very courteous way you declined to charge the Governmental officials who were instrumental in the consummation of this transaction with fraud, and very graciously said that while they might possibly be guilty of legal fraud, you did not desire even to use that term in connection with them and you hoped you would not be required to prove actual fraud, or something to that effect (you were stating it much more graciously than I can) yet the tendency and the necessities of the case under the allegations of the bill seem to me to drive the plaintiff inevitably to this conclusion, particularly in view of the testimony in this case up to this point: That if this witness, knowing the facts which he has stated that he does know or did know, was the moving spirit in the consummation of this transaction, and in so doing became a party to the conspiracy, is there any escape from the conclusion that he was the most guilty participant in the transaction, those greatest interested in the dye and chemical industry not excluded? And if that conclusion of mine be in any degree sound, is it proper to deprive this witness, although not a party defendant,

of the opportunity of disclosing in full measure the information upon which he acted?

MR. ANDERSON: Your Honor has asked a question which I have to consider a little, because I want to answer it, with the witness on the stand, with the greatest frankness that I can. My respect for this witness and the consideration due him as a former high official of the Government of the United States and a distinguished citizen is such that I want to avoid saying anything which by any implication could be taken to have a different construction from that feeling.

I have always taken the view that actual fraud is a matter which must be drawn from the entire record, be argued before the Court upon the entire record, and should be very carefully avoided in the presentation of a case, where only the facts should be proved and let the Court draw its conclusion. Because fraud, of course, is a conclusion from facts proven, and not a fact.

Therefore, if it were necessary or if in the study of this case it should be deemed necessary to do what the Government of the United States may conceive it to be its duty to do, I should not hesitate to argue for any conclusion which might be drawn from the evidence, however reluctant I might be to do so. Because, of course, the witness himself would be one of the first to disclaim any idea that any citizen of the United States is above the law, as he said, the administration of the law was in his charge. Therefore, if it is consistent with a frank answer to your Honor's question I prefer not to argue the question as to what this record will disclose or may disclose at the present time without a very careful study of the record, and I certainly would not contend for actual fraud unless I felt the record clearly sustained it.

THE COURT: But I do not mean your personal——

MR. ANDERSON: I understand. I am speaking officially; I have no personal status.

THE COURT: I understand. But must I not now, so far as the admission of evidence is concerned——

MR. ANDERSON: I understand, and I was going to answer that.

THE COURT: (continuing) ——or any question with respect to evidence, have in mind your position? Not whether you have succeeded in establishing a case, but your contention; because whether you have established a case or not, or made out a case, is a matter for final determination

MR. ANDERSON: I understand, sir; entirely so.

THE COURT: But I am confronted with your contention, that contention which I stated a moment ago, though you have not put it so and it seems to me you have put the premises a little differently, must be borne in mind in reaching the conclusion. If that is true, I see no escape from it.

MR. ANDERSON: Let me go ahead. Would your Honor permit me?

THE COURT: I should be glad to hear you.

MR. ANDERSON: Because this is a matter on which I would like to make my position clear if I can in an offhand way. It is my view that the distinguished gentleman who is now on the witness stand entirely misconceived the meaning of this law and his duties thereunder.

THE COURT: I missed your last statement.

MR. ANDERSON: His duties thereunder. I say that with great respect for his views. But I think so; and that the Government was probably acting

upon a wrong theory of this statute. If that is true, it is perfectly proper for us to bring it to the attention of the courts.

Let us assume that the Alien Property Custodian at that time was wrongfully advised as to his legal duties. I quite agree with Mr. Palmer that if the office which he occupied at that time authorized him to discharge the duties which he outlined here and on the theory which he has outlined, then it was the most remarkable office in the existence of the world; I agree with his statement of yesterday, there is nothing to equal it in the history of the world, certainly since the Roman Empire. But I do not think so.

Let us assume now that he honestly entertained that view, which I do not question, and that the people who were interested in securing these patents — notwithstanding his statement of his participation in this matter; turning to other evidence in this case their purpose and aim are of record, contemporaneous record—took advantage of that view and of a natural enthusiasm to render what he conceived to be a wise public service to secure these patents under conditions which would be a violation of the rights of the United States. Then in such event the element of actual fraud, even though he assumed responsibility and even though he participated in this matter at the time in the manner in which he has described, might be entirely absent because of the want of fraudulent intent. It might be due to a mistake of law, a mistake of fact, or any other consideration, but which would not relieve the situation in any way. But I have proceeded on that theory. It must be obvious to the Court now that a great deal of the original record in this case was not available to the Government at all, and I assume the

most favorable theory for the officers of the Government. Will your Honor permit me to finish my sentence?

THE COURT: Yes.

MR. ANDERSON: I want your Honor to try this case and to admit evidence in this case on the theory that when we come to examine this record the Government is going to take any position which it conceives to be proper, observing every possible respect for those who have discharged the duties of high office, to take any position which it conceives to be proper to maintain and establish the rights of the people of the United States as it conceives them.

MR. KRESEL: I do not understand, your Honor, that we can try a case on that basis.

MR. ANDERSON: Then we stand on the allegations of the bill.

MR. KRESEL: We must know whether this plaintiff has set forth its claims in this bill of complaint.

MR. ANDERSON: Well, we have.

MR. KRESEL: We cannot be proceeding, trying a case in the dark, with the reservation on the part of the Government that it may take any position it pleases afterwards. That seems to me an extraordinary statement.

MR. ANDERSON: Let me explain my statement, if counsel will allow me to interrupt him. It may save him argument. What I mean, so that the Court and counsel may understand, is any position that it sees proper on the evidence and the pleadings in this case. They are the limit.

THE COURT: That is the reason I asked you to answer the question which I did.

MR. ANDERSON: Yes.

THE COURT: Because while, as it seems to me,

you had a personal desire not to inject into this case any elements of fraud that could be voided, it seemed to me that probably you were letting your personal inclinations control your legal judgment when you said that fraud would not be attributed to the Governmental officials. It seemed to me that what you subsequently did in your legal capacity negatived that personal expression, and consequently as I understand your last statement you hold yourself in readiness to charge all persons who participated in this transaction with actual fraud if you deem it in your legal capacity necessary or proper to do so at the conclusion of this case. Consequently, the defendant must be prepared to meet and must prepare itself by evidence, documentary or given from this witness stand, such charges. But before you proceed may I ask, Colonel Anderson, one further question.

MR. ANDERSON: May I first answer that question?

THE COURT: Yes.

MR. ANDERSON: Your Honor does not quite recall my statement. Your Honor asked, Do you charge fraud in this case? I said, legal fraud, yes, actual fraud, I hope not. That is the way I expressed it.

THE COURT: I think so.

MR. ANDERSON: That is the way the record reads. I have stated in this case any number of times that while I wanted to avoid the unpleasant incidents of a trial, as your Honor has indicated, we are presenting this case on the pleadings and we stand upon every position that can be properly taken under those pleadings. I stated that before we closed our case. And upon any proven conclusion which we can argue for upon the pleadings and the evidence in this case we shall feel at lib-

erty at the conclusion of this case to argue for it. I say that, as your Honor has said, as counsel and in presenting the case and in the argument of the case I am going to take that position with the greatest consideration that I can, not inconsistent with my duties.

THE COURT: Now then, the other question.

MR. ANDERSON: I beg your Honor's pardon.

THE COURT: As I understood you, at the concluding part of your previous statement, you said that many of the exhibits in this case, many of the documents, were not open to you. I did not understand you.

MR. ANDERSON: Your Honor has seen a number of papers or correspondence produced that are produced not from the records of the Government at all. For instance, as I stated to your Honor the other day, the original letter from Mr. Palmer to Mr. Polk, a copy of the letter, was not in our possession.

THE COURT: Do you mind telling me again what you said, because I did not get that fully, and after that I may want to ask you another question about it.

MR. ANDERSON: I will. I intended to say this: First, I called the attention of Mr. Palmer yesterday to the fact that those important letters of the President, the originals, were in his possession. I am not imputing any improper motives. We have never seen them before. We have never been able to find them and I am going to show that they are not in the office of the Alien Property Custodian, if I have to, if it is material.

There is proof here that a number of papers were packed up and sent away from the Alien Property Custodian's office. I have tried to avoid that unpleasant situation here and that is what I

referred to when I said that I reserved the question under Section 46 of the bill. Counsel and I have agreed that possibly we will not have to go into that question. If I have to, I will do it.

If the evidence was coming at all, I preferred it to come from their side and not from us. A number of these papers were discovered and returned to the Government two weeks before this trial started. Among them was a number of copies of letters to the President, a copy of the letter of Mr. Palmer to Mr. Polk, and other papers of great importance in this case. It was discovered by counsel among their papers and promptly returned to us.

Those things were not in our possession at the time. They are developing here. We had to draw this bill upon the facts as we had them. We are in a position to show here that many of the records, original records of the Alien Property Custodian, are not there; and when I say that, unless I have very definite evidence that it is in the possession of these gentlemen, I want to be most careful in making any suggestion of that kind, or certainly to asperse their motives in the matter.

I have made that statement for the reason that I think it is due the Government I should make it. I made it, I think, at the outset. I made it the other day when the letter to Mr. Polk was produced. I said that neither the original nor a carbon copy of that letter had ever been seen by us until two weeks before this trial.

The Government has been in a position where it had to draw its case upon the facts before it; and the delay in investigation here—I mean the delay in bringing this suit—of several months, we state in the bill, was induced by our inability to get hold of the records. Colonel Miller testified the other

day that there were no copies of these assignments, these fundamental papers on which this case is based, in the Alien Property Custodian's office when he went there.

I am not here to try that kind of a question, but I am saying those things in view of the claim here that the Government is guilty of laches, which as a matter of law does not amount to anything, because the Government cannot be guilty of laches. It is stated in the bill as a reason why this thing has been delayed.

I have not mentioned that because I imagined that when Mr. Garvan went on the stand, in view of the statement in the bill, he would probably explain that and I would rather the situation should come from him and not from me. My statement on the record, of course, is merely in response to your Honor's question.

THE COURT: I did not understand what you meant by the statement. I did not understand it and consequently did not know what you meant by it.

MR. ANDERSON: Have I made myself clear?

THE COURT: Entirely so. I did not understand the legal conclusion that you wanted me to draw from it. Mr. Kresel, I will be glad to hear from you.

MR. KRESEL: I think your Honor, that I cannot let this colloquy between the Court and Colonel Anderson go by without stating the defendant's position in the matter, and it is this: that the Government at all times had in its possession every document that has been produced in this case, including the copy of the letter that Colonel Anderson says was written by Mr. Palmer to Mr. Polk and which he says was not at the time of the drawing of the bill available to him.

MR. ANDERSON: Well, now——

MR. KRESEL: I do not mean to say that Colonel Anderson is telling something that is not a fact, to his knowledge.

MR. ANDERSON: I want to hear Mr. Kresel and then I will reply.

THE COURT: I will hear you at the end of Mr. Kresel's statement.

MR. KRESEL: For example, your Honor Colonel Anderson says that the Government did not know of these letters from the President to Mr. Palmer, some of which Mr. Palmer produced here yesterday. Copies of those letters were on file at the White House. The fact that Mr. Palmer had the originals did not deprive the Government of knowledge of those letters.

He says that there were no copies of the assignments to us in the files of the Alien Property Custodian. Assuming that it be true, the fact is nevertheless true that the originals were on file and on record in the Patent Office. He says that he has proof in this case that two boxes of papers were taken away from the Alien Property Custodian's office and sent to the Chemical Foundation. He has not stated to your Honor that it appears from the letter which he calls the proof that the two boxes contained copies of demands and copies of assignments of the very patents that are included here; muniments of title to which this defendant was entitled.

That no secret of the fact was made that they were shipped to the Chemical Foundation is shown by the fact that the Government has been able to produce the letter written by Mr. Goldstein, of the Alien Property Custodian's office, to Mr. Hoguet advising him that the shipment was being made.

There have been hints here and there that documents were taken away improperly. We resent that. They have made the statement in their Bill of Complaint that documents were sent to the Chemical Foundation. We had assumed that when they put in the letter of Mr. Goldstein with reference to those two boxes, that that was their their proof, and we were willing to meet it.

Now, if they have got any other proof on the subject, let them produce it. But this business of stating here that the Government did not know the facts is unfounded. These attacks upon the Chemical Foundation and the chemical industry here have been the subject of five investigations before Congressional committees. Surely, the Government knew everything about those. Why, this Chemical Foundation has been investigated, as I say, five times from top to bottom and the Government knew and was chargeable with knowledge of everything that has been brought out here today or ever since we started this trial.

Not a new thing has been developed. And for the Government to come in here now and plead at the breaking of their case that they did not know the facts when they drew their bill of complaint is disingenuous, to say the least. They knew everything and we resent any imputation that anybody connected with this case took away any documents that he was not entitled to. You may answer.

MR. ANDERSON: All right, sir.

I am not going to indulge in epithets, if your Honor please. But since this question has been raised, much to my regret, possibly through an inadvertent statement of mine, I am going to state the facts and, if necessary, I am going to prove the facts.

MR. KRESEL: Now, I object to any statement of facts upon a subject of this sort. If there is any proof, let it be produced.

THE COURT: Colonel Anderson, you have stated your point. Mr. Kresel has stated his. Is there anything further to discuss?

MR. ANDERSON: There is, sir, because there have been statements made here that, I take it, I am disingenuous, which is one of the few suggestions I have ever had of that kind—I think probably the first I ever have had in court; and, therefore, I shall claim the privilege of replying to that statement.

THE COURT: I am going to give you that privilege, Colonel Anderson; but I hope that you will not, under the plea of personal privilege, which shall not be denied you, go further afield than if you replied to that statement tomorrow morning instead of this morning.

MR. ANDERSON: I am not. Your Honor rather implies that I am irritated by it. I would be out of court, but I am not in court. I am here officially and therefore I will not be any more irritated at the bar than I would if I were on the bench. So you are not going to find me overstepping the limits of what I conceive to be propriety because of any irritation.

THE COURT: But isn't it this, Colonel Anderson? I have led to this by what I have deemed and what I now consider necessary in order to determine the admissibility of a letter. You have both gone a little far afield.

MR. ANDERSON: Possibly.

THE COURT: Now, then, I do not see that there is anything that calls for a reply. You will have the opportunity, if you want it. It seems to me that we are discussing here the admissibility

of statements made to the witness on the fourth day of March, 1919. The consideration of that question brought up other questions as incidental thereto. It seems to me that is the question that is before me and that other questions are immaterial. I do not see that there is any particular reason for claiming personal privilege, but I am going to let you be the judge of that and not myself.

MR. KRESEL: I made no reflection upon Colonel Anderson personally. I do not see whether the question of privilege comes in.

THE COURT: What is that?

MR. KRESEL: I say, I have made no reflection upon Colonel Anderson personally whatsoever and did not intend to.

THE COURT: That was my understanding, Mr. Kresel.

MR. ANDERSON: I think the charge that the Government had been disingenuous and the flat denial of my statement that the Government did not have these papers available, according to my view, would, outside of the court room be regarded as a very serious reflection; but in the court room I am going to treat it in an official way. Therefore, I am simply going to say, if your Honor please, that the Government did not have these papers available.

THE COURT: Now, you made that before, Colonel Anderson.

MR. ANDERSON: I know.

THE COURT: I know, but that was made surely in support of your case. The defendant denies it. If that becomes an issue in this case, let us not debate it.

MR. ANDERSON: In the second place——

THE COURT: There has come an issue of fact,

not of veracity between counsel. If in my judgment your integrity or veracity were challenged, I should be very glad to hear you.

MR. ANDERSON: Then I understand your Honor does not wish to hear the subject discussed any further and I withdraw——

THE COURT: I think you have indicated on each side a difference of view with respect to certain facts in your professional capacity.

MR. ANDERSON: There has been a recital of facts by counsel on the other side which he claims supports his view. I have not recited the facts in connection with those matters. He makes specific statements of that kind. I will either reply to them or not, as your Honor desires. Unless I can reply to them fully, I do not want to reply to them at all.

THE COURT: Colonel Anderson, I am hearing you at length because I realize you are taking an entirely different viewpoint with respect to the matter. It seems to me you have each stated your view of the facts fully and frankly and you differ. There is no challenge of either side of improper motives.

MR. ANDERSON: I do not think I have stated the facts fully in reply to those statements made by counsel, but this is your Honor's court, and I never argue with a Court. If your Honor does not feel that it is desirable or necessary that I should make any further statement on the subject, I am perfectly willing to take my seat and drop the matter there.

THE COURT: One mistake you made there. This is not my court. This is a court of the United States for the District of Delaware, of which I am a mere incident. While sitting on this bench, I am functioning, not in any personal capacity whatsoever, but purely in an official capacity.

MR. ANDERSON: I am addressing your Honor in your official capacity. As an official, you are the presiding Judge of this court, and what you say goes in it as far as I am concerned, and I am not going to argue.

THE COURT: Colonel Anderson, it seems to me that you are entitled to do this: If you disagree with counsel as to the statement of facts, as to your view of the facts, you are entitled to say so of record. You have expressed your view and Mr. Kresel has expressed his. Now then, if you want to reaffirm that the statement made by you can be established by the facts, that is all right; but we are getting into a matter that is purely collateral, and, it seems to me, foreign to the issue.

MR. ANDERSON: If that is your Honor's judgment, I waive any personal claim whatever. I never make a personal claim in court.

THE COURT: I thank you.

I think the objection to the letter offered in evidence is not well taken. It is now admitted.

MR. KRESEL: There was no offer of a letter, your Honor. It was as to a conversation.

THE COURT: Yes. The witness was asked to detail the conversation had between him and Dr. Stieglitz on the fourth day of March, 1919. Will you proceed, please, Mr. Palmer.

A. I had a very brief conversation with him. He started to talk about salvarsan and its tremendous importance and the importance of the patents. I explained to him that that was my busy day; I was cleaning up my desk to get out; I was leaving, and I really could not talk to him at length. I asked him if he woud not commit to writing his views and what he desired to present to me; and he said he would.

By MR. KRESEL:

Q. 259. And did you subsequently receive from him a letter upon the subject?

A. I did.

Q. 260. Just look at that and state whether that is a copy of the letter?

A. This is a letter I received from him.

(At this point a short recess was taken by direction of the Court.)

MR. KRESEL: I would like to mark this, please.

THE COURT: Is the letter offered?

MR. KRESEL: That was offered. Colonel Anderson was examining it when we took the recess.

THE COURT: What is its date?

MR. KRESEL: Dated March 14, 1919.

THE COURT: Admitted.

Letter received in evidence and marked "Defendant's Exhibit No. 47", memorandum annexed "Defendant's Exhibit No. 47-A." (*See Exhibits, Vol. IV, pages 2314 and 2316.*)

MR. ANDERSON: Would your Honor permit me, in addition to the general objection, to renew my objection to that letter on the ground that it was addressed to the witness after he had retired from the office of Alien Property Custodian and addressed to him as Attorney General of the United States and not as Alien Property Custodian. It has statements of fact in there, and is introduced for the purpose of stating the fact which the writer should be called to make, and not be proved by a letter from a person we know nothing about, to an officer who had nothing to do with this transaction; and therefore we think it is entirely incompetent and inadmissible for these reasons, in addition to the reasons we have urged in the objections reserved to this testimony.

THE COURT: It has been admitted not as proof

of the facts therein contained, but as statements made to the witness prior to the execution of the assignment.

Q. 261. Upon receipt of this letter did you send it to Mr. Garvan, who was then Alien Property Custodian?

A. I referred it to the Alien Property Custodian, yes, sir.

MR. KRESEL: I want to read two paragraphs of this communication: (Reads from exhibit.)

MR. ANDERSON: If your Honor will permit me, in view of what has been read, I renew my motion to strike out this letter and the testimony in relation thereto, including the conversations with Mr. Palmer, for the reasons already stated; and directing attention especially to the letter, it will be observed from reading it that it is, I presume, read to have your Honor know that this gentleman, who was Chairman of the National Research Council and recommended certain things, and the papers attached, are his reasons for making the recommendation. Therefore, I respectfully suggest again that the only competent evidence of his reasons, if it were competent at all, would be the testimony of this witness.

I conceive that it would be impossible to separate the facts from the facts that were communicated to the witness, even if that were material, and if the letter were read before a jury, which of course is a test of evidence, it would be most prejudicial, if it had any relevancy whatever, which I do not think it has to the case, to introduce the views of this witness, his recommendations, etc., and have them read in that way without an opportunity for cross-examination or for testing his knowledge. I present that very earnestly, because I feel that that class of evidence is

wrong. I am not going to insist upon it further than that.

THE COURT: I admit it not as proof of the facts, but as representations made to this witness and referred by him to the then Alien Property Custodian prior to the date of the assignment to the defendant in this case. I doubt myself whether such evidence will eventually be found material in any way, even though those facts were true, to the decision of the issues in this case.

Q. 262. Mr. Palmer, do you recall a conference with representatives of the War Department about the disposition of these chemical patents?

A. I do.

Q. 263. There is in evidence here a memorandum made by you of that conference, and I mention it only to fix the date. Do you recall the date of the conference?

A. January 12th, I think.

Q. 264. February 12th is the memorandum.

A. February 12th.

Q. 265. Now, will you state what that conference was, as briefly as possible?

THE COURT: Same objection, I assume, Colonel Anderson.

MR. ANDERSON: Yes, sir. In addition to the usual objection, I should suggest, if we are going to have this evidence at all, that we ought to have the date, time, place, persons present and what they said, and not what the conference was.

Q. 265. (Continued). You understand that to be my question, Mr. Palmer?

A. Yes, sir.

MR. ANDERSON: And who said it, and what was exactly said.

MR. KRESEL: I understand that there is objection to his stating what was said?

THE COURT: There is the general objection

to stating what was said; but that is overruled. The suggestion that the witness give the time, place and persons present is I think a good one.

MR. KRESEL: May I ask whether the Government objects to the giving of this conversation, in view of the fact that the Government has introduced what purports to be a memorandum of that conversation made by these army officers?

MR. ANDERSON: Then the contemporaneous memorandum is the best evidence of what took place.

MR. KRESEL: In other words, we are bound, are we, by a memorandum made?

MR. ANDERSON: I thought it was a memorandum made by Mr. Palmer.

MR. KRESEL: Even so, and I do not know whether it was introduced, but even if it were, hasn't he the right to give the conversation? In other words, what I am questioning is whether the Government is raising objection to giving this conversation in view of the record.

THE COURT: I understand Colonel Anderson stands by the objection that he made. You may proceed Mr. Palmer.

A to Q. 265. (Continued). On the 12th of February, 1919, three Army officers in uniform called at my office, the office of the Alien Property Custodian, 16th and P Streets, Washington. They were named Holcombe, Swenarton, or Swinnerton, or something of that sort. I do not remember their rank. They were officers in uniform; and a third officer whose name I have forgotten. I am not sure that I knew at the time.

As I recall it, Holcombe—Major Holcombe, I think—was the spokesman for the party, and he said they came from the War Department to discuss with me the matter of the patents on dyes and chemicals; that there were many of them in which the War Department was interested; and he handed me a letter,

I think it was signed by himself, which contained what he desired to present. I read the letter.

Q. 266. I will ask you to stop there a moment. I show you this letter, Plaintiff's Exhibit No. 87 (handing witness). Will you state whether that is the letter that they presented?

A. Yes, that is the letter.

Q. 267. Now will you proceed?

A. After reading the letter and listening to his statement, which was along the same lines, I explained to him that his proposal that I should sell to the War Department, or should seize all the German patents and sell them all to the War Department at wholesale, was quite impossible, I could not consider such a thing for a moment, that it would mean an entire abdication of all my power and authority in the premises and was contrary to my arrangement with the Federal Trade Commission, which arrangement I explained to him as I have heretofore explained it on the stand. He then asked if an arrangement would be made by which the Government could be given free license to use such patents as the Government might need for its own use from any purchaser of these patents to whom we might sell them, and I told him that that was considered as a part of our policy, and that I would suggest that he see Mr. Hoguet as to the working out of that part of it. Immediately after the conversation I made a written memorandum of it and left it in the files.

Q. 268. Mr. Palmer, I read from this letter, Plaintiff's Exhibit No. 87, which Major Holcombe presented to you, the following:

> "It is belived that whatever action can be taken with respect to any patents of the classes referred to should be taken with respect to all enemy-owned patents. The amount of labor involved in investigating and determining what patents the Government will require protection

against is much more than would be involved in drafting blanket terms of sale for all enemy-owned patents, whether relating to war materials or not, for the purpose of ensuring adequate protection to the United States therefrom."

Did Major Holcombe and his associates who were there state that their desire was that you should execute a blanket form of sale to the War Department for all enemy-owned patents?

A. They wanted me to seize all the patents in this country owned by Germans and sell them all in one blanket assignment to the War Department.

Q. 269. At that conference did these gentlemen discuss with you specifically the nitrate patents?

A. I do not recall that they did.

Q. 270. Now I show you Plaintiff's Exhibit No. 88, and ask you whether that is the memorandum that you say you made of the conference on the same day that you had the conference (handing witness)?

A. That is a copy of it.

Q. 271. Yes, of course.

A. Signed by my initials.

Q. 272. Did you fix the price of $250,000 as the money consideration for the sale of these patents to the Chemical Foundation? Do not answer yet, please.

THE COURT: The question is leading, Mr. Kresel, and the Government objects to leading questions.

MR. KRESEL: I am sorry, sir.

Q. 273. Please state what conversations you had, and with whom, with reference to the money consideration and the other conditions of the sale of the patents to The Chemical Foundation?

A. My conversations with reference to the consideration were with Mr. Hoguet, Mr. Choate and Mr. Garvan, who were representing me in negotiations and conferences with the persons who were to organize the Chemical Foundation and supply the capital.

Q. 274. Will you state as briefly as is possible under the circumstances what you said upon the subject, and if you gave any reasons therefor you will state those?

A. I told them that I felt that if the other conditions which we were imposing were complied with, satisfactorily arranged for and secured, they would constitute a very large consideration for the transfer, and that there should, however, be a fair money consideration in addition thereto. Who first suggested as the money consideration the sum of $250,000, in those conferences that I had with them I am not certain, but I know that I approved it and finally fixed it as the cash consideration for the transfer.

MR. ANDERSON: Would you mind having him state the date of this.

MR. KRESEL: I will.

Q. 275. Will you as near as you recall state the date when that was determined on by you?

A. Well, that was during February.

MR. ANDERSON: Can he be more specific?

THE WITNESS: Of 1919.

MR. ANDERSON: Can he be more specific?

Q. 276. Can you fix it more specifically?

A. I cannot very well fix it more specifically than that, I had so many conferences with them about the details of this matter. It was before February 22d, I know that, because on February 22d, I closed up the report and signed the letter of transmittal to the President, and by that time I had fixed the price. So that it was some time between early February and the twenty-second.

Q. 277. You said if the other conditions were complied with and secured. You have not yet stated what the conditions were.

A. What I meant by that was that a corporation should be organized which would be willing to accept these patents either subject to a reservation that the

Government should have the free license to use them for its own use during the life of the patents, or by agreement make a subsequent conveyance to the Government for the same purpose, each of which would have the same effect.

MR. ANDERSON: I move to strike out "each of which would have the same effect," sir.

MR. KRESEL: I consent to have the words "each of which would have the same effect" stricken out.

THE COURT: It may be stricken out.

Q. 278. Proceed, Mr. Palmer.

A. And the understanding that we had would be properly arranged and secured, to make certain that the corporation would issue non-exclusive licenses on equal terms and upon fair and reasonable royalties to all applicants for the use of these patents, and generally have the corporation so framed, by its charter rights, duties and responsibilities, and its organization, as would ensure to our satisfaction the purpose which we had in mind of using it as a mere conduit through which these patents should flow for general public use in building up a great chemical industry in the country, to the end that the people might have the benefit from the development of pharmaceuticals and medicines and the Government might have the security which would come from its ability to control the development of the science in the manufacture of munitions, the preparations for war, etc. Those things were done as I planned them to be done, the details satisfactorily worked out, and I considered $250,000 additional in cash as the fair and reasonable price, and I accepted it as so fixed.

MR. ANDERSON: I object to the last statement about his opinion as to the value.

THE COURT: I think it has value apart from that, or may have value apart from that. I deny the motion.

Q. 279. Had you finished, Mr. Palmer.

A. Yes, sir.

MR. ANDERSON: The witness is finished, so I now ask your Honor to strike out so much of the answer to this question as relates to any matters which are not shown in the agreement of transfer of these patents to have been the considerations named for the conveyance thereof. In other words, what Mr. Palmer, Mr. Hoguet and Mr. Choate may have agreed upon, in whatever capacity they may have been acting, is concluded by the subsequent deed to this property, and a consideration not named in that deed or indicated in that deed is not the subject of evidence, as outside of the written instrument causing the conveyance.

THE COURT: My understanding was that the witness was asked first about the cash consideration and then the other conditions that he required in connection with the transfer, the primary purpose being, as I understood the questions, to ascertain the grounds upon which this witness in his official capacity determined that $250,000 was an adequate cash consideration for these patents.

MR. KRESEL: Your Honor is entirely correct; and I had not concluded that branch, I was going on to another question on the same subject.

THE COURT: I am not passing on the weight of the testimony, nor am I receiving the evidence to change any of the conditions under which the patents were transferred or to indicate there were any other conditions. For such other purposes as it may be used, the evidence will be permitted to remain, and the motion denied, with an exception noted.

Q. 280. Mr. Palmer, in fixing the cash consideration at $250,000, did you have in mind and did you

convey to these gentlemen with whom you were conferring about it the reasons for considering, as you have testified, that $250,000 in cash and these other considerations constituted a fair and reasonable price for the patents? If so, will you please state those reasons.

MR. ANDERSON: The question is objected to, first, because it indicates clearly, I think, the answer; in the second place, what the witness had in mind is certainly not a matter for consideration here. To make my objection clear, though not to argue, I respectfully suggest that the matter was concluded by the Alien Property Custodian who was the successor to this gentleman.

THE COURT: That is your contention.

MR. ANDERSON: I used the expression "concluded." The conveyance was made, there can be no question about that. We will stick to the record. The conveyance was made in writing. The conveyance was made officially by an acknowledged instrument. If these gentlemen had in mind getting ten million dollars for these patents, if they had discussed getting ten million dollars for these patents, and if they had agreed upon selling them for ten million dollars, it would not be evidence in this case, when they sold them for $250,000 and the instrument states the consideration. I may add, sir, that the question as now framed does not state his answer to the preceding question.

THE COURT: I think this question is improper in form and I shall sustain your objection on that ground; but inasmuch as you make a second objection, I do not see in view of your statements, how I can assume that the motives of the officers who participated in this transaction will not be attacked in the final hearing on this case or the appeal. Consequently, I shall take the answer and permit

the testimony called for in substance by this question to be received if the question is put in proper form.

MR. KRESEL: Your Honor thinks the question is objectionable in form?

THE COURT: Objectionable in form.

MR. KRESEL: I will try to reframe it.

Q. 281. Please state, Mr. Palmer, all the considerations that moved you to fix the price at $250,000 in cash upon the conditions that you have named, and state whether you conveyed these reasons or motives to Mr. Garvan or Mr. Choate in these conferences you have been telling about?

A. Well, all the reasons that actuated me in fixing those prices, to answer the last part of your question first, were conveyed by me to these gentlemen, Hoguet, Choate and Garvan, in the conferences which we had on the subject. There were many reasons which led me to that conclusion, most of them based upon information which I believed to be correct and which I had gathered from sources in which I had confidence. Some of them, of course, not many, because I was no chemist nor patent man, based upon my own knowledge. In the first place, without regard for the character of the purchaser and the conditions under which the purchaser was to operate these patents, passing that by for the moment, it was obvious that the value of the patents under the peculiar circumstances was not to be fixed as patents are ordinarily valued.

They had been seized by me from their owners, who were hostile, of course, to us, and very bitterly opposed to that act, as I knew. Not only, therefore, would the purchaser get none of the benefit whatever of the knowledge of the inventor and the original patentee, which in the usual sale of patents is always provided for to be given to the assignee, but the purchaser would have the active, I knew, hostility and

opposition of the inventor and patentee. Not only could he not get any knowledge of how to work the patent from the Alien Property Custodian, who was selling it, but he could not get in touch with the original owner and patentee, because he lived 4,000 miles away across the sea.

So that there was grave doubt as to whether the patents could be utilized successfully in this country. My information was that if they were to be utilized with any degree of success, it would only be after a tremendous amount of research and study by experts, experiments and other work, which would entail a large amount of time and effort and great expense. So that the value of the patents, therefore, was reduced, or I felt that that had to be very seriously taken into consideration before fixing any value.

In addition to that, under the Trading with the Enemy Act, ever since the beginning of the war the Federal Trade Commission had been issuing licenses to use these patents. There had been built up in the country something of a chemical industry, forced by the necessity of the war situation to grow to some extent, and this industry was watching these patents, and they had taken out some licenses from the Federal Trade Commission, and the sale that I was to make had to be subject to the rights of all licensees: As a considerable time had gone by since the beginning of the war, I did not doubt that the most valuable of the patents had probably been taken up in that manner.

Q. 281. (continued) You mean by licenses?

A. By licenses from the Federal Trade Commission, and that they were being used in the country. Whether those licenses would be surrendered to the Federal Trade Commission and new licenses taken out from the person who purchased from me or not, I had no means of knowing. I did not anticipate that they would be taken out from the new purchaser, so that

the purchaser was bound to take these properties subject to, from what my information then looked like, the use of them by others in the industry to a very considerable extent.

I may say that another reason which impelled me, and which I discussed with these gentlemen at that time was this, a matter to which I had as Alien Property Custodian given public expression before that time: these patents were taken out by the enemy persons originally in open, and to my mind flagrant violation of the spirit of our laws. The Germans had violated our hospitality, if I may call it such. They were, after all, mere privileges granted by the Government under an Act of Congress——

MR. ANDERSON: If your Honor please, I do not want to interrupt this witness; but the laws of the United States are matters of record. The acts of persons who take out patents under the laws of the United States are matters of record. If these patents did not conform to the law, then there was no reason for seizing them, because they were invalid anyhow, and the Alien Property Custodian in seizing them accepted them as legal documents, as a purchaser would. If they did not conform to the law, they gave nobody any rights, alien or anybody else. If they did conform to the law, then whatever rights the patentee got the Alien Property Custodian got subject to any existing licenses.

Now, it is obviously impossible for this witness to know the motives and purposes of people in Germany. He may be able to say, if he knows, whether anybody was actually using the patents in this country, that is, provided he can say so in a manner provided by the law with respect to proof of the use of patents. But for the witness to undertake to go into an argument of the fact

that the Germans had certain motives and somebody else had some motives, and that they had violated the spirit of a law is not evidence. There is but one thing that violates a law, and that is, a violation of the law, and therefore that involves a question of conclusion at which it is sometimes very difficult for a Court to arrive, and certainly is not a matter for the testimony of a witness. I therefore move to strike out all that part of the answer for the reasons stated, in addition to the objections already made to this testimony.

THE COURT: The motion is denied. The witness is giving his reasons for acting as he did. As I understand your statements, you hold yourself in readiness to take the position at the final argument of this case that the bill of complaint is an indictment against Mr. Palmer and others of like position. I think, therefore, Mr. Palmer is entitled to show the reasons which moved him to act in this matter. Whether those reasons were legally sufficient is another question.

MR. ANDERSON: May I suggest, then, sir: the bill of complaint, of course, I am not going to undertake to construe, and that is the limit of our rights in this case, no matter what I say here either one way or the other. In the second place, as I understand it, even in the case of a man charged with fraud, he cannot testify as to his motives; he can only testify as to facts. Well, there is no charge of fraud in that bill against Mr. Palmer. Therefore he can testify as to facts within his knowledge, but I respectfully submit to your Honor that even in a direct charge of fraud no man can get on the stand and testify as to what his motives were and his reasons.

THE COURT: I think, Colonel Anderson, you are probably right. I am not passing upon the

materiality or the weight of this, any more than I pass upon the materiality of the evidence of Mr. Metz, and particularly much of the documentary evidence that was introduced by you. I am leaving you to show its value, or the defendant to show its lack of value, at the final hearing. This testimony is of the character that it will be admissible under our general rule, and I do not now express any opinion or indicate any opinion by permitting it to be taken under our general rule.

MR. ANDERSON: Your Honor, I would like to state then that I will ask leave on the rebuttal to go into this whole question. Your Honor has indicated it is his purpose to limit the rebuttal, and in that event I shall have to give notice now that I will ask leave at that time to go into the whole question.

In addition to that, I take it that this evidence in any event can be received only as evidence of purpose, motive and intent, and not of the facts stated. For instance, certainly this witness cannot testify as to the motives in the minds of the Germans in taking out patents in the United States.

THE COURT: No.

MR. ANDERSON: And it is either taken as evidence of intent and motive on his part or it is not evidence at all, because it cannot be evidence of fact.

THE COURT: You may proceed, Mr. Palmer.

A. (continuing) I was stating what was one of the facts which led me to fix this price.

THE COURT: I rather gathered that you were stating one of the reasons that led you to fix that price, from facts as you understood them and not facts as you now represent them actually to be.

A. (continuing) I think I said what my information was and I was acting upon that information.

My information was that these chemical patents had not been worked in this country and I had a fund of information which led me to be satisfied that it was a fact that they were held by the Germans for the purpose of making it possible for them to import their products into this country and make it impossible for an American industry to develop and grow up into any size.

I believed that since that was plainly contrary to the purpose of our patent laws, as indicated by the Constitutional provision that patents might be issued to promote the sciences and the useful arts, and it having been a privilege granted by the Government which had been thus abused, in any accounting that the Government might make thereafter, or after the war, for such property taken, it could not under those circumstances be expected to any more than compensate the patentees for the cost of taking out the patents, at the outside, and this cost, of course, was comparatively small, a matter of $50.00 apiece or something in that neighborhood; and, the patents having on the average run half their time, on any such basis as that, $250,000 in itself would have been a large consideration.

Then there was, of course, the very important element, that in making the sale, I was not warranting the title. I was giving simply a sort of a quit claim.

MR. ANDERSON: I wish to move to strike that out, if you Honor please, on the ground that the instrument of sale is in writing and the legal construction thereof is a question for the Court and not for the witness.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: No, your Honor, I do not think I need answer that.

THE COURT: Motion denied.

A. (Continuing.) And the purchaser was bound to face serious question and possibly extensive litigation before he could profitably operate under them, as there was always the possibility that the ownership of some of the patents might have passed out of German hands lawfully before I seized them. I might have taken patents that did not belong to the Germans, either inadvertently or because I did not have the facts before me. And there might be a recovery of a very considerable number of such patents. Patents might, for instance, have been sold to neutrals, when there was under the law a perfect right for the enemy to sell these patents to neutrals. And I might find that while I was purporting to convey a very large number of patents, I was not in fact conveying them.

In addition to that, there was of course the consideration that as these patents never had been operated in America, had never been worked here, when they began to work them they might find themselves opposed by others who claimed that they were infringing American patents. In other words, none of these patents had been judicially determined as to their metes and bounds, if I may use such an expression.

Those, in a general way, were the general considerations that led me to believe and announce that this was a fair price and that it was all that ought to be charged.

Of course, in addition to that, obviously, was the fact that the terms of the sale imposed conditions which very seriously affected the money value of the patents and consequently very seriously affected the question of money consideration.

The value of a patent, as everybody knows, is based on the fact that it gives to the patentee a monopoly. We were selling these patents in such a way that that feature of it was to be destroyed. Nobody

was to get the exclusive right to manufacture or produce or sell under these patents. I made that a *sine qua non* at all times from the beginning to the end of the consideration of this question; and of course, it was fatal to the idea of a large money price.

Further than that, it was a part of the plan, for the purposes which I have outlined here on the stand and which I shall not repeat, and which we believed not only sufficient and proper, but highly important: it was a part of that arrangement that this institution which was to buy these patents should not make any money and we saw to it that the thing was secured in such a way that they would never make any money out of the patents; I mean, that the stockholders, the individuals who put up the money were restricted to six per cent. on their investment.

That, of course, had its effect, must have had its effect on the value of the patents to the purchaser. I had to consider not only the value of the patents generally and the value to the seller; but in view of the fact that I had, for the reasons that I have stated, created a purchaser for the purpose of making the purchase, I had to consider the value to the purchaser.

So that, considered from all these angles and from all these points of view, I believed then and I believe now that $250,000 was a fair, adequate price and consideration.

THE COURT: We will now take the usual recess.

(Recess until 1.00 o'clock P. M., Standard Time.)

AFTER RECESS.

MR. ANDERSON: May it please the Court, on yesterday counsel introduced in evidence a paper signed by Edward S. Rogers and stated that Mr. Rogers was a representative or employee of the

Federal Trade Commission. I was not informed on the question and reserved the question on that point. I have since made inquiry and it appears from the best information I can get, that Mr. Rogers was, at the time of that paper, officially connected with the Federal Trade Commission as counsel, perhaps, and that one or more of the licenses issued by the Federal Trade Commission and put in evidence in this case was attested by Mr. Rogers as acting counsel in charge.

I refer especially to the license dated January 17, 1918, Plaintiff's Exhibit No. 228. From those facts I assume that Mr. Rogers occupied that position and am willing to admit that fact unless it be shown to the contrary during this case, and I do not think it will. Without waiving my objection to the evidence, I admit that specific fact.

By Mr. Kresel:

Q. 282. Mr. Palmer, the order of February 26, 1919, executed by Mr. Polk, with reference to the sale of these patents to The Chemical Foundation, authorized the sale at private sale. I wish you would state the reasons which actuated you in recommending to Mr. Polk that these be sold at private sale instead of at public auction.

The Court: I understand this is subject to all the objections that you made to similar testimony this morning, Colonel Anderson.

Mr. Anderson: Yes, sir. General and specific objections.

The Court: It will be taken under the general rule.

A. The sale of the Bayer Company, carrying with it 1200 or more chemical patents to a single purchaser, taught me the danger of selling these chemical pat-

r an ordinary public auction to the highest
Those patents had belonged to the Bayer
ny of Germany, one of the six great concerns
luring the war had been combined into a single
I feared that they covered, without knowing
what they did cover, a wide range of chemical
es and products.
knew that they would ramify generally into
ıstry and I saw that if the rest of the patents,
l patents, were sold in the same manner to a
urchaser, a monopoly would obviously be cre-
this country having the same effects as far as
ernment and the people were concerned as the
monopolistic control of the industry in this
had had in the past. The purchasers of the
Company having already put $5,000,000 into
operty and being the owner of that many
were in a much better position than anybody
become a purchaser, and there would be great
that they would be the purchaser and there
nen come under a single hand, under a single
all these patents, with the same powers per-
o them as the Germans had held.
refore, I early concluded that whatever sale
e would have to be made subject to conditions
ould protect us against repetition of what
pened and which would, as I have explained,
ne opportunity of the Government to have the
f the developing chemical industry.
I determined upon the conditions. Having
t, I readily saw that at public sale it would be
le to get anybody to accept these patents
o those conditions, conditions that would re-
m to give equal rights to all in the way of
conditions that would require them to give to
rnment a very valuable portion of what they

were proposing to buy, and conditions that would make it certain that no monopoly should be created.

When the conditions shaped themselves in our minds, conditions under which we desired to sell, I saw that it would be impossible to hold a public sale and hope to get any purchaser, and therefore created The Chemical Foundation for the purpose of becoming the purchaser, in order to make sure that those conditions would be carried out. In addition to all that, of course, there was at all times the very striking possibility that if we sold at public sale and were compelled to sell to the highest bidder the patents might ultimately go back directly or indirectly into the hands of the same people from whom we had taken them.

While I know the law provided that no such person could become a purchaser, there was no way by which we could guard against that happening. After the war was over, the chances were that it would slip back into the same old groove. We knew in that connection the purpose and intent of many Germans who had property in this country taken from them and sold at public sale to re-acquire them in some kind of fashion when the war should be over. We knew that was in their minds with this tremendously important war key industry. I could not have prevented that thing happening if I had had an open public auction selling to the highest bidder. Therefore, I determined upon a private sale to this purchaser which we had created for the purpose of becoming the purchaser, which is the only concern that I knew about that was willing to accept them on the conditions that we had imposed.

THE COURT: If I understand you, Mr. Kresel, the witness is merely giving the reasons which impelled him in his official capacity to recommend an Act as he did, in connection with this matter.

MR. KRESEL: That is it, your Honor.

THE COURT: You are not relying on such statements of the witness to establish any fact other than that fact, I take it.

MR. KRESEL: That is right, your Honor.

THE COURT: Now, then, are you going to make inquiry now as to how he knew what was in the minds of the Germans?

MR. KRESEL: I am going to ask him that now.

THE COURT: Very well.

Q. 283. You spoke of knowing that it was in the minds of the Germans to re-acquire, if they could, the property that you had seized. Will you state what information you had on that point?

A. The information I had was gained chiefly from the correspondence between the German owners of American properties and their agents and other people in this country, which had been going on by wireless——

MR. ANDERSON: You have not stated what time.

MR. KRESEL: He is coming to that.

A. (continuing) ——which had been going on by wireless just before we got into the war and after, in fact, we got into the war, but principally before, at a time when the Germans realized that we were going to get in. We had numberless cases in which instructions were given by the German owners to their friends in America or to their agents and representatives here that title to the property should be transferred to them until after the war.

Q. 284. Can you give some examples?

A. Yes, I can give some examples.

Q. 285. Will you, please?

A. I remember one interesting and well-known case was the case of the Hamburg-American Lines terminal at St. Thomas, in the Virgin Islands, where, acting under instructions from the Hamburg-American Line in Germany, the title to the property was con-

veyed to a man by the name of Jorgensen, who gave his note for the purchase price, amounting, I think, to $290,000, and at the same time executed an agreement with the representative of the Hamburg-American Line that the note should be renewed whenever it became due.

MR. ANDERSON: I will have to object to that. If it has any materiality whatever, I do not think the details of that transaction should be presented here without the written evidence.

THE COURT: I think I created the difficulty by my inquiry, so I will sustain the objection.

MR. KRESEL: I followed your Honor's suggestion.

MR. ANDERSON: I beg leave at this time to move to strike out the two preceding answers on the special ground that they contain matter which upon the face of the answers is not within the witness's knowledge and on the ground that they contain statements of what other people purported to do and thought and what was in their minds and upon the further ground that the matters to which he refers were obviously founded upon correspondence, if at all, prior to the war.

THE COURT: I wonder, Colonel Anderson, if I am laboring under a misapprehension. If I am, will you not help me? Is, from your standpoint, the information upon which the Alien Property Custodian acted at all relevant here? I understand you fully, I think, that the ultimate questions, as you stated briefly and tersely yesterday and the day before, are whether the Alien Property Custodian and Mr. Polk and the President had the power to do what they purported to do; that is, under the Act of Congress. That is the broad question. And then whether they actually did

what they purported to do, namely, the validity or effectiveness of the several Executive orders.

Then value comes in and the private sale comes in, because if these were sold for what would have been their full and complete value separate from any and all other conditions of sale, there would be left, as I understand it, but the single question of whether or not, as you put it, the buyer and seller were the same party.

Conspiracy is a thing which I have seen somewhere is difficult to prove, and when proved, is difficult to disestablish. Now, you contend that you have proved the alleged conspiracy, and as you stated yesterday, proved the allegations of the Bill except the forty-sixth paragraph, if my recollection serves me right, with respect to which you reserved the right to put in further evidence. Now, one of the constructions, at least, whether valid or not, would be that which I indicated yesterday and attempted to indicate this morning, and it seems to me for that reason possibly (understand, I am not determining this finally) that the information upon which those people acted, the Alien Property Custodian, Mr. Polk and the President of the United States, becomes of importance, but of course does not control the question or have any value in the determination of the question as to whether the statute gave them the power to make the sale at the price and under the terms and conditions under which it was made; but it seems to me that there is a probability of materiality. Do you think that is so?

MR. ANDERSON: No, sir. Taking the theory of the case that your Honor has indicated, any proper and legal evidence of any actual facts upon which the action of the officers of the Government was predicated is, I take it, probably

material. The line of where it is and where it is not material is not easy to draw, and, therefore, of course, the latitude and discretion of your Honor must be followed; and unless that were clearly a mistake, it would not be reviewable.

The reasons which actuate a person, as distinguished from the facts upon which he acted, I take it, are never evidence after the fact, whether he be charged with fraud or mistake. The facts, the knowledge that he possessed may be material. But, assuming the facts to have been correctly represented, it then becomes a question of power and whether or not he followed the procedure required by law. What may have been his reasons, acting within his legal rights and in the manner prescribed by law, and with knowledge of the actual facts or a correct understanding of the actual facts, I have contended throughout and in accordance with your Honor's view, were not reviewable. But if this is considered on the ground of conspiracy or fraud, it matters not what may have been his reasons or his motives, they must be inferred from his acts and cannot be proved by direct testimony.

THE COURT: I do not think there is any difference in our views with respect to that, with one possible exception. I use the word "information" and not "reasons." I realize that the witness did incorporate in part of his answer this morning some reasons and I wondered at the time just where the line was there, whether he was not stating his reasons rather than information. But I decided to let that go in under the general rule. But it seems to me reasons become of some moment here, because I understand the statute to be that the reasons of the President must be stated in the order——

MR. ANDERSON: And only those.

THE COURT: Authorizing the private sale. Won't you help me with respect to that for a moment?

MR. ANDERSON: Yes, sir.

THE COURT: I have forgotten what you said with respect to those reasons and your attitude with respect to them—that is, what in your view the Court's attitude with respect to those reasons must be, whether they may be demurred to in effect as insufficient, whether the accuracy in fact of those reasons can be here challenged by you, or just exactly what your position was with respect to that matter.

MR. ANDERSON: I will try to make my position clear, with your Honor's permission. The act provides that the President, stating his reasons therefor, in the public interest must determine this. No other reasons other than those stated by the President can be considered, because the act has required that he state his reason. It is an unusual act—very unusual. In the other acts where he was required to determine certain things, as in taking over the railroads or the telegraph lines, power had merely been given him to determine in the public interest, and you could not get behind that because you did not know what was in his mind.

But here he must state his reasons therefor in the public interest. I think the authorities, such as the Chinese Exclusion Acts, requiring the exercise of discretion founded upon certain facts, allowed the review of the reasons; after giving all reasonable presumption in favor of the validity of the act of an executive officer the Court, if he has clearly misunderstood or was wrongfully advised to use the English idea, as to those facts,

will review them to the end that the law may prevail. To that extent your Honor can go into it.

THE COURT: That is, review them as to their correctness.

MR. ANDERSON: As to their sufficiency for the predication, and whether in that case those reasons were within the contemplation of the law.

THE COURT: From your standpoint can we go into the accuracy of the statement of the reasons?

MR. ANDERSON: No, sir; the accuracy of the statement of the reasons is conclusive, I should say, on all parties. He states, "These are my reasons"—1, 2, 3. Those are the only reasons to be considered.

To use an extreme illustration, suppose the President or the officer exercising this power should say that he finds it is a warm day, and something else, and that such and such conditions, which are entirely irrelevant, would justify this in the public interest. In my judgment the Court could review that, because that would be clearly not a sufficient predicate for his action.

THE COURT: In brief, you say the reasons may be demurred to?

MR. ANDERSON: The reasons—instead of being against the pleader, in favor of the pleader. Your Honor understands that position, of course.

THE COURT: I cannot go back of the fact.

MR. ANDERSON: You cannot go back of the wisdom of his action if the reasons are sufficient. I want to make it very clear, because I do not want to limit the scope of this proceedings at all, and in this hurried debate at the bar it might be so construed. You can look at his power, first to perform the act, second the method of performance of the act, that it followed the law; third, you can look into the facts upon which his act is predi-

cated, because mistake of fact is always a ground——

THE COURT: Then you can go behind the reasons stated?

MR. ANDERSON: The facts on which his reason is predicated—that is, the facts known to him at that time. Do I make myself clear? Let me use an illustration. For instance, suppose I come to this Court—and nothing is more familiar to us than the rule of the exercise of judicial discretion. Assuming jurisdiction, and assuming the Court to have known the facts, the exercise of judicial discretion may be reviewed only as to its correctness.

THE COURT: I understand.

MR. ANDERSON: In the same way exactly an officer of the Government, who is an agent of the people, the people speaking through the law have declared can only do a certain thing in a certain manner. You inquire into that. If it says he must exercise discretion. You can inquire into the fact whether he was misinformed as to the fact, because that is like a mistake of fact which this Court could set aside or correct by its decree, just as a fraud on the Court would set aside a decree. The Court would not be responsible, it would be somebody else would be responsible; the Court would never be presumed to be responsible for a thing of that kind.

The same with an Executive officer. When you come to the last stage of the proceeding you inquire into the actual fact upon which he acted. You inquire second, into whether the reasons which he states in the public interest are such as will sustain his action.

I am frank to say to your Honor that in inquiring into that every reasonable presumption will be in favor of the reasons which are assigned,

but if they would be clearly insufficient and without the scope of the act, and due to an error entirely of the meaning of the act, the Court would set them aside.

THE COURT: Of the same effect as if no Statute had been passed. That is, if the Statute did not give him the power to do it, it could no more allow the Trading with the Enemy Act to support the act.

MR. ANDERSON: And if he stated reasons which are obviously not sufficient to sustain his action.

THE COURT: I understand that.

MR. ANDERSON: But the inquiry into his reasons must be limited to the reasons which he gave in the order.

THE COURT: I understand that, but there is another point which you have probably stated with all clearness, and yet I have not got it.

MR. ANDERSON: Possibly I am not very clear today.

THE COURT: I have been wondering just where that leads to. As I understand you, there is no question but that the power can be inquired into, and you both agree to that.

MR. ANDERSON: Yes, sir, both as to the power to do the act and the method of doing it.

THE COURT: I do not know whether you differ or not as to whether judicial inquiry may be had into the reasons stated by the President.

MR. ANDERSON: I think we disagree as to that.

THE COURT: I assume you disagree as to that. I can understand you there. I do not know what my conclusions will be, but I understand you. I am not sure, however, that I understand your other contention, and I am not sure that I under-

stand exactly what it is, but if I do it is something of this nature—that you can not only inquire into the sufficiency of the stated reasons, assuming them to accurately represent the facts embodied in the reasons, but you may also go behind the stated reasons to inquire into the accuracy in fact.

MR. ANDERSON: Yes.

THE COURT: And also to determine whether there were other facts which were in existence, but absent from the mind of the President, which if they had been known to him, would in the judicial opinion have led to a different conclusion. Have I stated it clearly?

MR ANDERSON: Your Honor has stated, I would say—I do not like to use the expression—with reasonable accuracy what I am trying to express. It is very difficult, because the line of distinction there is extremely fine and I would really have to have the authorities before me for analysis, which I haven't got. But your Honor has stated in general the thought that is in my mind.

On the other hand, assuming those conditions to have been met, as to the wisdom of the action, the exercise of the discretion, of course we all agree. But in addition to that, what I am objecting to here is that the distinguished witness upon the stand cannot give his reasons for his action and cannot give his motives for his action, because if a man could give his reasons and motives when a question of this kind arose, you never could prove the contrary. You must assume that from the facts stated.

MR. KRESEL: I desire to be heard on that, your Honor.

MR. ANDERSON: I did not intend to go into an argument.

THE COURT: I will hear you, but it seemed to me this. I realize in one or two instances statements have been injected into the case which might be considered as pure reasoning apart from facts. But my difficulty with most of this testimony is as to whether the information which came to the knowledge of the Executive officer and the information that Executive officer must have—I assume they cannot have all facts judicially determined before they make a decision——

MR. ANDERSON: Certainly not.

THE COURT: It seemed to me that the information was proper evidence to be received under the general rule without an immediate determination of whether or not it is material.

MR. ANDERSON: Your Honor will allow me to say that when I am making these objections, of course, I am not making them captiously—I need not say that—but I recognize your Honor's position and when I state them over, it is not intended to re-argue but merely to keep the record straight that we may have these questions open for consideration when we come to argue.

THE COURT: You understand the unusual nature of this case makes me proceed at a great expense of time.

MR. ANDERSON: I quite understand.

THE COURT: I will hear you, Mr. Kresel.

MR. KRESEL: We contend, your Honor, that not only may this officer state the information that he had upon which he acted, as your Honor has very well pointed out that the Executive officers must act upon information and not wait for judicial construction or determination of the facts, but we also say that it is admissible upon the ground that there is a conspiracy charged here.

It is charged that these officers did not act upon their own volition; that they were imposed upon; that they were carrying out the purposes and desires and the conspiracy of others. Therefore I contend that this officer can give what reasons he had that actuated him to do what he did, so as to show that they were his own reasons; that he was acting upon reasons that appealed to him and not because somebody else tried to get him to do the thing. Have I made myself plain, your Honor?

THE COURT: Yes. You may take such evidence you believe to be relevant or material, and such evidence will be taken under our general rule, and I will pass upon any necessary question with respect to it eventually.

MR. ANDERSON: Under that statement I will avoid objecting unless I think that I should point out additional objections.

MR. KRESEL: I do not think there was any unanswered question, so I will proceed to the next question.

Q. 286. In the order signed by Mr. Polk, of the 26th of February, 1919, one of the reasons in the public interest assigned by Mr. Polk for making of the order reads as follows:

"Sixth: Unnecessary expense, delay and inconvenience may be avoided by a private sale." I wish you would state what the facts were with reference to the expense, delay and inconvenience that would have been entailed in a public sale as distinguished from a private sale.

A. We never made a public sale of any of the enemy properties under our published regulations without having the properties appraised by an independent appraisal company and without having a critical

audit by certified public accountants of the books and accounts which were pertinent and which might be important for bidders to know about. Of course, to have made an appraisal of these patents would have required a large amount of time and a great expenditure of money. The sales which we made were made after advertisement in accordance with the statute, and we construed it to mean the distribution of a prospectus which we carefully prepared and in which we inserted all the data with respect to the property that was possibly obtainable from every source, and the advertisement for a long period in all of the prominent newspapers throughout the entire country. And this would have entailed delay and great expense about a property of this sort.

Q. 287. Did you have funds available for that purpose?

A. We had no funds available except such as we might get out of the purchase price. We would pay the expenses of the sale, including appraisal and auctioneer and advertising and that sort of thing out of the purchase price; but without any assurance that we could sell at public sale or get anybody to bid anything for it, we would have been stuck. The expenses that we would have incurred there would have been no way of paying whatever. We had no appropriation for it.

Q. 288. In cases of the sale of a going property that was in your charge, how did you pay the expenses there in the first instances?

A. Expenses of the sale?

Q. 288. (Continuing). Yes, advertising and so on.

A. We paid them out of the purchase price.

Q. 289. Did you in the first instance pay them out of the property? For example, take the Bayer sale. You had control of the property; it was a going concern; it had money in its treasury; did it not?

A. Yes.

Q. 290. In a case of that sort did you use the funds of the property itself to pay these expenses as they were incurred?

MR. ANDERSON: I will have to object to this examination as leading, sir.

THE COURT: The question is leading in form.

Q. 291. Mr. Palmer, did you have your general appropriation for the payment of expenses in the sale of property?

A. No, no appropriation at all.

MR. KRESEL: I think that is all.

MR. ANDERSON: You can stand aside, Mr. Palmer.

MR. KRESEL: No questions?

MR. ANDERSON: No.

THE WITNESS: Does that mean I am excused?

MR. KRESEL: Is the witness excused?

MR. ANDERSON: As far as I am concerned.

(Witness excused.)

MR. KRESEL: I will call Mr. Garvan.

FRANCIS P. GARVAN.

FRANCIS P. GARVAN, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By MR. KRESEL:

Q. 1. Did you give your name?

A. Francis P. Garvan.

Q. 2. And your residence?

A. 903 Park Avenue, New York City.

Q. 3. Your occupation?

A. Lawyer.

Q. 4. How long have you been admitted to the Bar?

A. Since 1899.

Q. 5. Have you held any public office?

A. Yes, I was Assistant District Attorney of the County of New York.

Q. 6. From what year to what year?

A. First a Deputy and then an Assistant; I do not know the division; I think from the 1st of January 1900, to the 1st of January, 1911. That is to the best of my recollection.

Q. 7. Have you held any other public office?

A. I was Alien Property Custodian.

Q. 8. From what date to what date?

A. From March 4, 1919, to March 10th, 11th or 12th, 1921; I am not sure of the exact date.

Q. 9. Prior to your becoming Alien Property Custodian, had you been associated in the work of that office?

A. I had.

Q. 10. In what capacity?

A. As manager of the Bureau of Investigation.

Q. 11. And during what period?

A. From about November, 1917, up to March 4, 1919.

Q. 12. Are you the President of the Chemical Foundation, which is the defendant here?

A. I am.

Q. 13. How long have you held that office?

A. Since the incorporation of the Chemical Foundation.

Q. 14. Do you remember the date of that?

A. It was incorporated February 19, 1919. I think there were the regular incorporators of the Trust Company here in Delaware. How long they held office, for two or three days until the first meeting, I am not positive as to those dates. When I say

the first President, there may have been one of those incorporators who were the employees of the Trust Company here, who were the original people.

Q. 15. Since you have been president of The Chemical Foundation have you received any salary?

A. I have not.

Q. 16. Or any compensation whatsoever?

A. None whatsoever.

MR. ANDERSON: I object to that, if your Honor please. Compensation is a conclusion. If he did not receive any salary, that is a fact. "Compensation" is a very indefinite term. There are many compensations other than money.

THE COURT: That is very broad, is it not?

MR. ANDERSON: It is.

THE COURT: That is the reason, possibly, that Mr. Kresel wanted it.

MR. ANDERSON: It is a conclusion. He can say whether he received any specific thing, but the question of compensation or compensating benefits or compensating results is a conclusion to be drawn from facts and not a question as to which the witness can testify and give his conclusions.

MR. KRESEL: I submit, your Honor, that the question is perfectly proper. It does not call for this witness's conclusion.

THE COURT: Whether the term compensation is used or not, he can say whether he has received anything.

MR. ANDERSON: He can say whether he received any money; he can say whether he received any salary or he can say whether he received any other material or direct benefit, specifying, and he can give the facts; but whether that is compensation or what are the conditions that are compensation is one of the most intangible things and calls for a conclusion.

THE COURT: I think it is open to possibly another construction, Colonel Anderson. If I were asking the question, I should probably use some other term, but it may be that the term used is better than the one I would use. In order that there may be no doubt about it, I will sustain the objection and allow the question to be reframed.

Q. 17. Have you received from the Chemical Foundation any money consideration whatsoever, whether a salary or in any other way?

A. I have not.

Q. 18. Have they paid your expenses as president?

A. They have not.

Q. 19. Have you paid them yourself?

A. I have.

Q. 20. When you used the facilities of the office of The Chemical Foundation, such as to use the telephone for your private affairs, did they pay that?

A. They have not.

Q. 21. Did you pay it?

A. I did.

Q. 22. Have you ever had any stock in The Chemical Foundation?

A. I have not.

Q. 23. Have you ever had any stock in this corporation, directly or indirectly, whether it was registered in your name or in somebody else's name?

A. I have not.

Q. 24. It appears from the minutes of The Chemical Foundation that upon its organization the three representatives whose names were used as incorporators here made subscriptions to, I think, fifteen shares of stock of the company and that when they resigned in favor of the directors of the company, one of those subscriptions was assigned to you in your name for, I

think, thirteen shares of stock. Did you ever exercise that subscription?

A. I think you are wrong. I think it was not a subscription, but a right to subscribe.

Q. 25. Well, right to subscribe then. Did you ever exercise that right?

A. No.

Q. 26. In fact, did you know that that right to subscribe had been assigned to you?

MR. ANDERSON: One moment, Mr. Garvan.

In the examination of this witness, if your Honor please, I would respectfully ask counsel to avoid leading. I do not want to object.

THE COURT: The objection is sustained.

MR. KRESEL: Would your Honor like to have the question re-read? I do not believe it is leading. I asked him whether he asked anybody for the right of the assignment. I do not know of any other way that I can bring out the fact.

THE COURT: Won't you repeat it, Mr. Stenographer.

(Q. 26 repeated as above recorded.)

THE COURT: So far as leading questions are concerned, try to frame the question so that it will not indicate whether the answer expected is yes or no. The form usually has been, "Did you or did you not."

MR. KRESEL: Very well, your Honor. I thank you for the suggestion.

Q. 27. Mr. Garvan, did you or did you not know that that right to subscribe had been assigned in your name?

A. Not until years afterwards.

Q. 28. And when did you discover it?

A. Some time, I think, about a year ago.

Q. 29. Did you ever exercise that right?

A. I did not.

Q. 30. Did you ever have any interest in the business of any of the chemical concerns or pharmaceutical concerns that have been and are the stockholders of The Chemical Foundation?

A. I did not.

Q. 31. Have you now any such interest?

A. I have not.

Q. 32. Were you in any way, either directly or indirectly interested in any subscription to any stock of The Chemical Foundation made in the name of anybody?

A. I was not.

Q. 33. As director of the Bureau of Investigation in the Alien Property Custodian's office where did you make your office principally?

A. At first in Washington; later in New York.

Q. 34. For how long a period did you make your office in Washington, approximately?

A. I think it was about the first six months while the reports were coming in in the largest volume.

Q. 35. And thereafter your principal office was in the City of New York?

A. City of New York.

Q. 36. Please state whether you had in the Bureau of Investigation any other persons who were assisting in that work?

A. Quite a large number.

Q. 37. Could you approximately state the number?

A. They varied so that I do not believe I could. I suppose about eight or nine lawyers and—it would be impossible for me to state that.

Q. 38. Did you in the course of your management of this bureau assign particular lines of work to particular people?

A. I did.

Q. 39. Were you personally active in the investigating work?

A. I was.

Q. 40. I shall try to inquire of you particularly with reference to what, if any, investigation was made by you or under your supervision of German holdings in chemical interests in this country; you understand?

A. Yes, sir.

Q. 41. Did you undertake such an investigation?

A. I did.

Q. 42. And did you take part therein personally?

A. I did.

Q. 43. Who assisted you therein?

A. Mr. Joseph H. Choate, Jr.

Q. 44. Will you please state when Mr. Choate first became connected with the Alien Property Custodian's office?

A. I could not exactly, Mr. Kresel.

Q. 45. Approximately?

A. I should say the early part of 1918.

Q. 46. Was Mr. Choate a volunteer, or was he paid for his services?

A. A volunteer.

Q. 47. What part of the work in the Alien Property Custodian's office did Mr. Choate have charge of?

A. The chemical investigations.

Q. 48. And to your knowledge did Mr. Choate devote all of his time while he was in the Bureau of which you were the head, to that work?

A. He did.

THE COURT: Your questions are taking a leading form again, Mr. Kresel.

MR. KRESEL: I will try to correct that, your Honor.

Q. 49. I wish you would state what information you had derived by you as a result of the investigation into German interests in the chemical industry in the

United States on or about the nineteenth day of February, 1919? I mentioned that date as the date when The Chemical Foundation was incorporated.

MR. ANDERSON: In addition to the general objections reserved to all this evidence, I wish to object to the question as too general and indefinite and one that calls for an answer of such a general and indefinite character that counsel for the plaintiff is not in a position to properly object thereto. Therefore, I think the question should be specific and directed to specific matter.

THE COURT: May I have that question?

(Q. 49 repeated as above recorded.)

MR. ANDERSON: Of course, the specific objection is in addition to the general objection of immateriality and irrelevancy, and so forth, which is reserved to all of this.

THE COURT: The general rule would cover that, of course.

MR. KRESEL: If your Honor desires me to state——

THE COURT: No, I do not, unless you have a desire to do it. My difficulty is this, Colonel Anderson: It goes back to those charges in the Bill again of lack of information. He is asked to say what information he has. The question does allow the witness to cover a broader or narrower field, depending upon the information and knowledge that he has, and so I do not see how I can exclude it in view of the allegation of the Bill. Do you?

MR. ANDERSON: I would not venture to suggest to distinguish counsel for the defendant, if your Honor please, the method of asking his questions. I will, however, be glad to answer your Honor's question. Your Honor will recall that when we began this investigation, during the tes-

timony of Mr. Metz and Colonel Miller, I was compelled to withdraw a number of questions by which I could readily have shortened the investigation, because of their generality and indefiniteness. I recognized his objection was good, and I think in this particular case of the witness now on the stand, who is not only himself a lawyer, but is president of the defendant corporation and was Alien Property Custodian (I do not use the word in any unpleasant sense), to release the witness to make a general speech or statement on the question of the conditions in the United States prior to the war would, if properly followed up, perhaps, with cross-examination, keep us here a week because there is no limit to the wrongs which we feel we suffered from the Germans or the German activities in this country from 1914 to 1916, and therefore, I think if there are any specific facts desired on that subject, the question should be framed in such a way and the foundation laid in such a way, how the information was derived, and so forth, as to enable me to test that evidence without having to go into the history of the war. Therefore, aside from my other objections, I think the question is clearly objectionable on that ground.

Mr. Kresel: I quite recognize, your Honor, and I recall very clearly that Colonel Anderson did have to reframe general questions that he put to Mr. Metz, but the cases are not at all similar. Mr. Metz was not charged with anything in this case by the Bill of Complaint of the plaintiff. His motives are not here in question, except as they were developed upon cross-examination. It is not charged that he was induced by conspirators to take an official action which it is now claimed was unlawful and I do not desire only certain specific

facts that this gentleman had before him when he took his official action, but I want him to state to the Court all information that he had which is material here, so that the Court may determine whether his motives were or were not proper. We are entitled to it under the terms and the allegations of this Bill. They can not, on one hand, charge us with having violated the law—though fraud in fact is denied, they still claim it is at least fraud in law—they cannot make that charge against us and then stop us from showing upon what information we were acting. That is our position.

THE COURT: We will now take a ten-minute recess. At its conclusion, Colonel Anderson, I shall appreciate it very much if you will cite to me the objections to the questions put to Colonel Metz and to Colonel Miller which were overruled by the Court, which will establish a precedent for the ruling in this case.

(A short recess was then taken by direction of the Court.)

MR. ANDERSON: In the few moments during recess I have only been able to look at a very small portion of the direct testimony of Mr. Metz and did not at all refer to the re-direct, where the controversy was greatest. At page 1753 of the record the question is asked: "Q. 55. I will ask you to take these licenses which you have identified, both the original issue and the subsequent issue, and state what you did under those licenses of the Federal Trade Commission and each of them?

"MR. KRESEL: I have to object to such an indefinite question."

There was some discussion, and then I said:

"I will ask him a specific question, if your Honor please, but if I should ask him a specific question, from my experience, I am afraid counsel will object. I therefore ask him to state what he did."

Mr. Kresel on the next page, 1754——

THE COURT: You are going now ahead of the ruling.

MR. ANDERSON: I have not yet come to the ruling. Mr. Kresel on the next page says:

"Of course, Colonel, if that is the purpose, I have no objection. I do not want to hamper you by keeping you down to any particular frame of question, but I simply wanted to be sure that we were not giving Mr. Metz the entire field; that is all."

That is exactly my objection here.

"MR. ANDERSON: No, all I wanted Mr. Metz to do was to say what he did under these licenses."

Then I further stated: "Whether he operated under them has been suggested is a conclusion. So I asked him what he did." Mr. Kresel says: "I have no objection to putting the question in that form." The Court says: "You say you have no objection. Does that go to substance as well as form?"

MR. KRESEL: So that disposed of that. There was no ruling of the Court on that.

MR. ANDERSON: No ruling by the Court on it, but I had to reframe it twice.

THE COURT: Does the record sustain that conclusion, sir?

MR. ANDERSON: I think so, sir. I stated the question twice.

THE COURT: Very well.

MR. ANDERSON: Then the statement which I

read, by Mr. Kresel, was that his purpose was to prevent giving Mr. Metz the whole field, which is exactly what is in my mind now, and I reframed it then in order to limit it.

On page 1767:

"Q. 126. When you got those products in the United States, what did you do with them?

"A. Sold them to the——

"MR. KRESEL: One minute, please. I have no objections—he sold them."

Then the witness went on to say, "Sold them in the regular course of business to the Government; sold to the Government, to hospitals and to physicians."

At page 1768, on the same subject of sales, the witness was asked, did it extend throughout the United States, and his answer was "Throughout the United States and I exported to Germany within the last month or two 160,000 ampules.

"MR. KRESEL: I ask that that part be stricken out.

"THE COURT: Let the answer be stricken out and the question repeated."

THE COURT: You do not contend that that ruling has anything to do with the form of the question?

MR. ANDERSON: I do contend that the ruling was an express limitation to a specific question and a specific answer, which is all I ask for here. I am not making the objection in this case to the specific form of the question. My objection is to the opening up of an unlimited discussion on the subject.

THE COURT: Won't you read me then once more, please, what you have just read about the

question found on page 1767, because if I understood you correctly, Colonel Anderson, the ruling there was that when the witness had answered the question, he must stop.

MR. ANDERSON: Yes, sir. May I suggest this to your Honor. If you put the question in an indefinite form so that the witness can make any statement under it that he chooses, you cannot stop him because anything he may say is responsive to the question.

THE COURT: That may be sound reasoning or not, that I will not pass on. What I wanted to get and what I wanted to get you to get—and I will take another recess if you desire it and at such length as you desire and await your notifying me that you are ready, to find a ruling in connection with the testimony of Colonel Miller or Colonel Metz which will serve as a precedent and warrant a ruling in your favor on the question now before the Court. That is the thing that I want to get.

MR. ANDERSON: Yes, sir. I want to come to that. Mr. Metz's testimony is hundreds of pages long and I have been able to go through very few.

THE COURT: I will wait for you when we will take an adjournment.

MR. ANDERSON: If your Honor will permit me, I only wish to point out a few of these questions. I do not want to point them all out.

At page 2114, in Colonel Miller's testimony:

"Had you any personal knowledge of the character of the corporation known as The Chemical Foundation, Incorporated?

"MR. KRESEL: Pardon me a minute. I object to that question as being indefinite. I do not know what is meant by 'the character of the Chemical Foundation.'

"THE COURT: I think your objection is well taken.

"MR. ANDERSON: I will withdraw the question. I was trying to shorten it."

Next question:

"Will you state all the facts within your own knowledge as to your execution of that order for the assignment of the patents mentioned therein, which are commonly called the Norma Company of America?

"MR. KRESEL: I am sorry, Colonel Anderson. But I must object to the indefinite character of that question. This is direct examination.

"THE COURT: I think the objection is well taken."

Then I said, "Colonel Miller has got to leave on a train at 10:50 and I am trying to shorten it. Of course, if there is an objection, I withdraw the question."

Your Honor had already ruled and the withdrawal was unnecessary. At page 2120;

"Q. 33. As to the one of the fifth day of November, 1921, which is in evidence, which undertakes to confirm certain sales theretofore made of patents, trademarks, etc.; do you know how this matter first came to your attention?

"A. It came in the usual routine way.

"MR. KRESEL: Please answer just yes or no.

"A. Why, I know, yes.

"Q. 34. Please state how it came to you and by whom it was brought to your attention?

"MR. KRESEL: I do not object to the question in so far as it asks by whom it was brought to his attention. I do object to the question as to how it came to his attention, as being too indefinite.

"THE WITNESS: Can I tell the individual?

"THE COURT: Just a minute, Colonel.

"Will you divide your question then, Colonel Anderson, or do you press it as it stands?"

Then I said, "It will probably simplify it if I divide it, so as to save time."

Then I go on and divide the question into two questions and ask the specific questions. Down lower on page 2121:

"Do you recall what, if anything, was stated to you at the time you signed or authorized this order?

"A. I directed it——

"MR. KRESEL: Pardon me a moment. Do you mean authorized or signed?"

I withdrew the word "authorized" and asked the following question:

"At the time you signed this order or when it was brought to you?

"A. This order came to me——

"MR. KRESEL: Please answer yes or no.

"A. State that question again, please."

The question was repeated and the answer was, "Yes, I recall it."

"Can you please state what was said to you on the subject by Mr. Zimmerman?

"MR. KRESEL: I object to the question upon the ground that the defendant cannot be bound by any conversations," and so forth.

On page 2122:

"Please answer the question, Colonel Miller?

"A. I had given instructions to have these records brought up to date, it really being a routine arrangement, in order to clear the titles and to enable American users of these trademarks to obtain them from The Chemical Foundation properly.

"MR. KRESEL: Just a minute, please. I did not interrupt Colonel Miller because I felt that perhaps he would get on to the conversation. He had been asked about a conversation. The answer up to the present has not stated a word about the conversation.

"THE COURT: Let the answer be stricken out and the question repeated.

"Q. 40. What were the representations made to you as to the situation that brought about this order?

"MR. KRESEL: I object to the question in that form.

"THE COURT: The objection is sustained. Let the prior question be repeated, unless it is withdrawn, Colonel Anderson."

I submit, if your Honor please, just running through those questions, that the statement which I made, that we were held to a very strict direct examination—as to which I am not complaining in the slightest; do not understand that I am complaining and I only refer to it to state what I understood to be the rule under which this examination was proceeding—is a fair statement. I objected during Mr. Palmer's examination on the same ground; and as we are evidently in for a long examination of this witness, he being president of the defendant corporation, I felt and now feel and submit to the Court for its ruling, to which I, of course, will immediately bow, that this witness should not be asked general questions which would open up a whole field of inquiry and discussion and allow him—and I do not mean to suggest that the witness will abuse that privilege—to make a general speech — I am not using it in any offensive form—on the subject of the relations of the Germans and the United States.

Of course, we claim that all this is immaterial and I think for that reason this question is clearly an objectionable question. I have pointed out such cases as your Honor referred to. If I am mistaken as to your Honor's ruling, then I am perfectly willing to accept any ruling that your Honor may make.

But even if your Honor thinks that in the exer-

cise of your discretion this should be allowed, I merely make the point on the record and let it go ahead, of course, without further discussion. But at this time I want to make that observation.

THE COURT: In the first place, I think the rulings cited by you are not precedents for the ruling now asked by you. Nevertheless, I am going to sustain your contention in this respect, although I have grave doubts indeed as to its being well founded or well taken. You may take such action in view of the ruling as you desire, Mr. Kresel.

MR. KRESEL: If your Honor please, may I ask the Court's indulgence to adjourn a little earlier today?

THE COURT: At this time?

MR. KRESEL: If that is not putting your Honor to any trouble. I want to take the three o'clock train. I live far away from home and always go home on Fridays. Is there any objection?

MR. ANDERSON: Entirely agreeable to me, sir? Any arrangement convenient to Mr. Kresel is convenient to me.

THE COURT: This case is suspended until 8:30 Monday morning. We will have no session on the Fourth of July, nor on Saturday, nor on the following Monday, July 9th. There is a patent case set for argument on that day.

(Whereupon at 2:30 o'clock P. M. Standard time, an adjournment was taken until Monday, July 2, 1923, at 8:30 o'clock A. M., Standard time.)

NINETEENTH DAY.

Wilmington, Delaware, July 2nd, 1923, at 8:30 o'clock a. m. Standard Time.

Before:

HON. HUGH M. MORRIS, U. S. District Judge.

TRIAL RESUMED BEFORE THE COURT.

FRANCIS P. GARVAN resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. KRESEL:

Q. 50. Mr. Garvan, did or did not the Bureau of Investigation of which you were the director, conduct an inquiry into the nature and extent of enemy-holdings in the organic chemical industry of the United States and the relation thereto of United States patents issued to Germans?

A. It did.

Q. 51. Will you briefly indicate how that investigation was conducted and the sources of information that came to you?

A. In the first place, we went through the Bayer Company, which was the largest of the agencies here, in respect to the property which it had on this side of the water. We searched through their files and records and their correspondence with Germany and correspondence with the other representatives of the German industries here. We went through all of the Big Six representatives in the same way.

We went through all that the Military Intelligence, the Naval Intelligence, the Department of Justice, the Secret Service, the War Trade Board, and several other agencies of the Government who were working on confidential information at that time, had.

We searched the literature of the subject which was very extensive, both in England and France and here, particularly in England, where Lord Moulton had published several articles, and who was the biggest patent lawyer in England, and was also in control of the production of munitions on behalf of England throughout the war and was knighted for that. He was a great source of our information.

We received information from the British Intelligence and from the French Intelligence; from British Who's Who, which was a publication of enormous extent, which gave the history of every one connected with international trade in Germany.

We had access to the cablegrams which passed between here and abroad, both through the diplomatic corps, both through Bernstorff and his home office, and through the agents here of the Cartel. Those cables were seized by the Navy when they took over the Sayville plant.

We talked with every one whom we could hope to have any knowledge on the subject. Agents here, the German agents, were submitted to examination and their clerks and employees, leading physicians, leading chemists, professors in colleges who had studied in Germany.

That in general shows the scope of the investigation.

Q. 52. About when did you begin this inquiry?

A. Almost immediately upon being appointed; at least by the 1st of January or February of 1918, because I think one of the first companies we investigated of any kind was the Bayer Company. One other source of information which I forgot was the propaganda centers. The propaganda societies of the Germans were taken possession of by the Government and their libraries of propaganda were taken over by

us and gone through and all the correspondence in connection with those.

MR. ANDERSON: I assume that it is unnecessary for me to renew the general objections. They are considered as being made, if your Honor please?

THE COURT: I understand that all objections other than objections of form are made to this and every question asked by the defense, not only of this witness but of all other witnesses, in the same way that the defendant's objections were understood to lie to each and every question asked by you.

MR. KRESEL: Yes, your Honor.

Q. 53. Mr. Garvan, have you prepared a list of books and papers that were used in that investigation?

A. A partial list.

Q. 54. Have you it before you?

A. Yes.

Q. 55. I am going to let you refresh your recollection.

A. This, of course, does not include all.

Q. 56. I understand. Just state the first source of information that you went to?

A. By date, one of the earliest sources of information was a book translated and made part of a Senate document, a book translated on the resolution of Senator Aldrich. It was called "The Great German Banks and their Concentration in Connection with the Economic Development of Germany." That was a Senate document of the Sixty-First Congress and was translated from the German in order to be printed as a Senate document.

MR. KRESEL: Of course, I do not want to burden the record with an immense book like this, but I should like to have it appear on the record,

that this book called "The German Great Banks and their Concentration—National Monetary Commission," which is document 593 of the Sixty-first Congress, Second Session, may be referred to by either side upon the argument.

THE COURT: Is it so understood, Colonel Anderson?

MR. ANDERSON: It is a large order, if your Honor please. I have never seen the book, but I——

MR. KRESEL: That is the reason I am not asking that it be marked in evidence.

MR. ANDERSON: I am just thinking what I am letting into the record. Subject to the general objections I shall agree that either side may refer to that as a public document. I am not going to object to it particularly.

THE COURT: In this or in the Appellate Court they may refer to it?

MR. ANDERSON: Yes.

MR. KRESEL: Thank you. I read one paragraph from page 724 of this book:

"It is self-evident that this development has not reached its final goal."

The author is discussing the development of the chemical industry in Germany.

"There is even now an agreement between the Badische Anilin-und Sodafabrik and the Hochst Dye Works by which they act in common in fixing the selling price of artificial indigo manufactured by both. It is quite likely that the Hochst-Cassella-Kalle and Co. combination and the other triple alliance (Badische Anilin Fabrik, Bayer, and the Aktiengesellschaft fur Anilin Fabrikation) will gradually get together in one way or another and at some more or less distant future time form a consolidation of all aniline dye works or some looser union."

May this be marked, then, simply for identification. I think that would be a better way.

THE COURT: I was just wondering whether it would not keep our record in better form if it were made an exhibit as you have made each of the other documents that you have attempted to mark for use, because eventually one side or the other has put it in——

MR. KRESEL: Yes.

THE COURT: And eventually that could be put of record and marked as an exhibit in the case, with the understanding that it should not be re-printed with the record.

MR. KRESEL: That is agreeable. Is that agreeable to you, Colonel?

MR. ANDERSON: Subject to the general and specific objections heretofore made to this evidence, which we regard as entirely outside the case, I would have no objection to having that marked as an exhibit, and we will stipulate at this time that it shall not be printed in the record, and that either party may use it as argument, as agreed.

THE COURT: I wondered whether that was your real purpose with reference to Defendant's Exhibit No. 30, which was Mr. Palmer's report.

MR. ANDERSON: I think Defendant's Exhibit 30 contains so much information that both sides have referred to, although quite an extensive task it would be better to print—unless there is some index or something of that kind which might be left out.

MR. KRESEL: Of course I agree to that. The chemical section has got to be printed, and I think you wanted the first section printed.

MR. ANDERSON: The first section printed, yes.

MR. KRESEL: There are some sections that perhaps you and I may agree upon later.

MR. ANDERSON: It may be that we can strike out formal parts or things of that sort. We will do that with great pleasure if we can.

Book received in evidence and marked "Defendant's Exhibit No. 48." (*Not printed.*)

Q. 57. Mr. Garvan, will you mention the next document which you had before you in this investigation?

A. "Germany's Commercial Grip on the World—Her Business Methods Explained," by Henri Hauser, who was a French economist, which was originally published in the French in 1915, afterwards translated and published in England, and copies of which I have brought over here and circulated here.

MR. KRESEL: I offer this book in evidence, and am willing to stipulate as to that the same as we stipulated about the preceding exhibit.

MR. ANDERSON: If your Honor please, as to that book, if it is offered in evidence purely and solely for the purpose of showing that Mr. Garvan had this book available as a source of information, for what it might have been worth to him, then I would make only the general objections which we are carrying upon the record such as we make to that type of evidence.

But if it is offered in evidence as proof of the facts contained therein, or of any fact contained therein as an existing fact, then I would be constrained to object, because it is not in the same position as the other book, which is an official publication of the United States, but is merely a publication by a French author of whose knowledge and information I know nothing, and of course it is not evidence in this case.

With that understanding, I want to make a

specific objection to the admission of the book or any part thereof as evidence in this case.

Mr. Kresel: I think Colonel Anderson's distinction is well taken, and while I recognize that a book of this sort has not the same probative force as the official report which went in in the preceding exhibit, I do not quite agree that its only value is to show that Mr. Garvan had that before him.

As your Honor well stated on Friday, Executive officers, administrative officers, must act upon information that is before them, without waiting for judicial determination as to facts or law. And I think that this piece of evidence, as well as others that I am about to offer, is entitled to more than the value of showing that it was information that Mr. Garvan had before him. It is not only information that he had before him, but information that he acted upon, information that he was entitled to act upon.

With that statement, I am offering that in evidence and am willing to stipulate as to that the same as I did as to the preceding exhibit, namely, that while it is marked in evidence, it may be referred to by both sides but need not be printed in full.

The Court: Mr. Kresel, may I ask now whether it is your purpose at some time to ask what the facts were, as proved by someone who knew the facts apart from sources of information of that character, about the German dye and chemical situation in this country.

Mr. Kresel: Your Honor, we already have in evidence the chemical section of Mr. Palmer's report, which states the facts, and which, being an official report, your Honor will see is probative of the facts; but we are not going to stop there.

We shall produce evidence to show what the present status of the industry is since the war.

THE COURT: I was thinking of the status at the time of the seizure rather than now. I am wondering whether in the category referred to by the witness there were included encyclopedias, dictionaries and things of that sort.

MR. KRESEL: The basis upon which we offer this, your Honor, is that here was a publication which was available to the Government upon a subject that the Government was investigating. It contained certain information. That information together with other information was what the Government in this instance acted upon. We are trying to show what that information was.

THE COURT: That is a question of some moment. There has been no similar question in my experience and I doubt whether the question is not entirely new. Consequently, Colonel Anderson, the only thing that I can do is to admit it subject to such objections as you have made and determine eventually the value it has, if any, if it becomes necessary to consider this book at all.

MR. ANDERSON: Your Honor please, I recognize your Honor's position and difficulties and in order to make my position clear, in view of the suggestion of counsel as to a stipulation, I will just state it specifically that your Honor may rule. We object to the introduction or other use of the book in question as evidence in this case or in connection with this case upon the following grounds:

(1) Upon the general and specific grounds which have already been set forth in the record in the opening statements and discussion of counsel which are reserved as to all questions, by agreement.

THE COURT: On both sides.

MR. ANDERSON: On both sides.

(2) On the specific ground that this evidence is entirely immaterial for reasons which are obvious and may not be applicable to much other evidence objected to on that ground.

(3) On the ground that it is not an official document of the Government of the United States and is not competent or admissible as evidence in any case in the courts of the United States as proof of any facts contained therein.

To make that clear, the full extent to which the witness could go would be to say that among other sources of information he had certain books and publications. There was available to the witness the entire chemical library of Congress and we could not put all that in evidence. Therefore, I object to this evidence, even for the purpose for which it is offered, as showing or tending to show that there was any information contained in this book available to the witness when he was discharging the duties to which he refers, for the reason that it does not appear and cannot be made to appear, except by direct testimony, that the information contained in that book is information at all. I have never seen the book, but proof must be submitted that those are facts, and facts are the sole basis of action.

Therefore, I want to make my objections to this book as specific as possible; and without repeating them as to other similar books, I will refer to these objections as covering the ground of my objection to those books.

THE COURT: Your last statement, I assume, would really come under the hearsay rule.

MR. ANDERSON: Yes, of course. I did not ex-

plain in detail because it is perfectly obvious what it refers to.

THE COURT: It is admitted subject to the plaintiff's objection.

MR. ANDERSON: I might add that if the book is admitted in evidence, I am willing to stipulate with counsel that it shall not be printed in the record and that either side may refer to it as if printed, but without waiving any objections to its admissibility.

Received in evidence and marked "Defendant's Exhibit No. 49." (*Not printed.*)

Q. 58. Mr. Garvan, will you give me the next piece of literature that you had before you?

A. "Science and the Nation," a series of essays by the Professors of Cambridge University, England, with an introduction by Lord Moulton.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: Same objection, if your Honor please, general and specific, as made to the preceding exhibit.

THE COURT: I understand that all documents of the character of the preceding one are all admitted subject to the same objection.

Received in evidence and marked "Defendant's Exhibit No. 50." (*Not printed.*)

Q. 59. And the next one?

A. "Report on Dyestuffs for American Textile and other Industries," by Thomas H. Norton, Commercial Agent of the Department of Commerce.

MR. KRESEL: We offer that in evidence. It is an official report and we offer it not only as a basis of information but as proof of the facts therein contained.

THE COURT: Admitted under the same conditions as Exhibit 48.

Received in evidence and marked "Defendant's Exhibit No. 51." (*Not printed.*)

MR. KRESEL: I call attention in connection with this exhibit to the fact that it appears therefrom that it is a report which was made pursuant to a resolution of the Senate under date of January 26, 1915.

MR. ANDERSON: Your Honor will understand, of course, that even as to that report, a report of that particular character, we reserve the question as to whether it is proof of the facts contained in it, because we have not had a chance to examine it and we do not know anything about the report. It may be that when we come to argue, we will admit that it is proof of facts, but we will reserve the question.

THE COURT: All questions are reserved for argument.

MR. ANDERSON: I want to reserve it. I do not want to waive that question.

MR. KRESEL: I do not think, your Honor, that the Government is in any position in this case to question the rule that this report and other similar official reports are proof of the facts therein contained.

Again I remind your Honor and counsel that that was the position taken by Colonel Anderson here with reference to a report of the Federal Trade Commission, from which he read a portion; and I was careful at that time to inquire whether that was being offered upon the theory that such an official report was proof of the facts. Colonel Anderson stated that it was, and that is the law. There is no question about that. Therefore, I say that it is not a question of reserving anything. It is in.

MR. ANDERSON: Possibly that is true, but I

want to reserve the right to argue as to certain specific reports to the contrary. I do not admit they all come in the same class.

Q. 60. Mr. Garvan, what is the next one?

A. "Preliminary Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, of the Alien Property Custodian's staff, which was introduced in the hearings of the House, at pages 658 to 678.

MR. ANDERSON: May I ask if you have that report?

MR. KRESEL: Yes, it is printed right here.

MR. ANDERSON: I mean the original, because if you have the original, I would like to see it.

MR. KRESEL: I do not know where the original is. It is probably in the A. P. C.'s office.

MR. ANDERSON: We cannot find it.

MR. KRESEL: But it is one of the exhibits that is printed in the minutes of the hearing before the Committee on Ways and Means, and in accordance with our stipulation we have a right to use the secondary evidence.

I therefore offer in evidence the "Preliminary Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, which is printed at pages 658 to 678 of this Hearing before the Committee on Ways and Means on H. R. 2706.

If it is agreable to your Honor and Colonel Anderson, we will mark this and I may have the right to substitute a typewritten copy of that. I will have a copy drawn up.

THE COURT: Mr. Kresel, do you offer that as proof of the facts, as you did exhibits 48 and 51, or do you offer it as you did the French document?

MR. KRESEL: I offer that as proof of the facts, your Honor. It is an official report.

MR. ANDERSON: I not only make the objections heretofore made, but reserve the objection that this particular report is not proof of the facts and cannot be so received.

MR. KRESEL: When we come to argue the case before your Honor, we may argue that also.

MR. ANDERSON: May I state my position so that Mr. Kresel may understand it. That is a report, as I understand it, by a public accountant, just a report to his employer, say Mr. Garvan——

MR. KRESEL: No, not Mr. Garvan.

MR. ANDERSON: Well, whoever it was.

MR. KRESEL: The Alien Property Custodian.

MR. ANDERSON: The Alien Property Custodian; same thing. That public accountant is available to testify, presumably, and certainly he can be called, and while it might show, assuming it to be evidence at all in this case, that Mr. Garvan had that report before him or available at that time, whatever that report contained, I respectfully contend that it is not proof of any fact contained therein, because better evidence is available in the person of the man himself who drew the report. The only point I waive as to that report is the production of the original signed copy.

MR. KRESEL: I do not need to argue that at the present time.

THE COURT: Admitted, subject to the objections.

Received in evidence and marked "Defendant's Exhibit No. 52." (*See Exhibits, Vol. IV, page 2323.*)

MR. KRESEL: I also offer in evidence the "Supplementary and Final Report on the Farbwerke-Hoechst Company of New York," by Lee J. Wolfe, which is printed in the same volume of

proceedings before the Committee on Ways and Means at page 678 and 679.

MR. ANDERSON: The same objections, if your Honor pleases.

THE COURT: Admitted subject to the objections.

Received in evidence and marked "Defendant's Exhibit No. 53." (*See Exhibits, Vol. IV, page 2379.*)

Q. 61. Mr. Garvan, will you give me the next document?

A. "Report on Kuttroff, Pickhardt & Company, Incorporated," by Lee J. Wolfe, of the Alien Property Custodian's staff, House Hearings 2706, pages 679 to 692. Kuttroff, Pickhardt & Company were the agents of the Badische Company,

Q. 62. In the United States?

A. Yes.

MR. KRESEL: I offer in evidence the report on Kuttroff, Pickhardt & Company, Inc., dated January 11, 1919, made by Mr. Wolfe of the A. P. C. staff.

MR. ANDERSON: Same objection, of course, as made to the preceding exhibit.

THE COURT: Admitted, subject to the objection.

Received in evidence and marked "Defendant's Exhibit No. 54." (*See Exhibits, Vol. IV, page 2382.*)

MR. ANDERSON: I would like to ask Mr. Garvan if he has a copy or original of that complete report, or any of these complete reports, for the reason that I would like to check the question of whether they are complete in their publication. Have you any of those reports? I do not want to interrupt examination.

MR. KRESEL: We have not. At least, I do not know of any.

THE WITNESS: Not that I know of. Wolfe can give you a copy.

MR. KRESEL: If there is any question about it, Colonel Anderson, I will communicate with Mr. Wolfe and see if he has copies in his office, and if he has, we will produce them.

MR. ANDERSON: I would very much like to have them, because I do not know anything about them.

THE COURT: You may discuss that with counsel.

MR. ANDERSON: Yes, sir.

THE WITNESS: Wolfe must have his original working papers, any way. They always keep them.

Q. 63. Now, what is the next one, Mr. Garvan?

A. Letter of Hauser, who was head of the Hoechst concern in Germany, to Mr. Metz's firm in America, who were their agents here, dated September 20th, 1909, House Resolution 8078, page 513.

MR. KRESEL: I offer in evidence a letter from the Hoechst Company signed by Hauser, which is printed at page 513 of the Hearings before the Committee on Finance of the United States Senate on H. R. 8078.

MR. ANDERSON: Same objection, sir.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 55." (*See Exhibits, Vol. IV, page 2418.*)

MR. ANDERSON: Of course, I might add that a letter from Dr. Hauser to Mr. Metz certainly could not have any relation to the Government of the United States.

I understand your Honor's ruling and I merely want to show that on the record.

Q. 64. Mr. Garvan, Nos. 9, 10 and 11 are in, so you need not mention those, they are already in evidence. What is your next one?

A. Letter of the Badische Company of Germany to Kuttroff, Pickhardt, dated September 3, 1913, House Resolution 8078, Page 514.

MR. KRESEL: I offer in evidence a letter from the Farbwerke-Hoechst Company, dated September 3, 1913, printed at pages 514 and 515 of the hearing before the Committee on Finance of the United States Senate.

THE COURT: Admitted.

MR. ANDERSON: Pages 514 to 515?

MR. KRESEL: Yes.

THE WITNESS: It is there printed by "Hoescht." I think there is a mistake there.

MR. KRESEL: Yes. I have it here at page 514 (indicating to counsel).

Received in evidence and marked "Defendant's Exhibit No. 56." (*See Exhibits, Vol. IV, page 2421.*)

Q. 65. What is the next one, Mr. Garvan?

A. Letter to Hauser to Metz, dated July 31, 1913.

Q. 66. That is already in; and so is 14 and 15. What is the next one?

A. Letter Hoechst to Metz, dated June 8, 1914.

MR. KRESEL: I offer in evidence letter from the Hoechst Company to Metz, printed at page 516 of this volume, "Hearings before the Committee on Finance."

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 57." (*See Exhibits, Vol. IV, page 2423.*)

MR. ANDERSON: Without repeating the spec
ific objection——

THE COURT: The same objection to all o
them, Colonel Anderson, will be considered a
made by you.

MR. ANDERSON: Yes, sir.

Q. 67. What is the next one?

A. Letter from the Badische Company to Kutt
roff, Pickhardt, dated June 13, 1914, page 515.

MR. KRESEL: I offer in evidence letter fron
the Badische Company to Kuttroff, Pickhardt &
Co., dated June 13, 1914, printed at page 515 o
the Hearings before the Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defend
ant's Exhibit No. 58." (See *Exhibits, Vol. IV, pag*
2424.)

Q. 68. What is the next one?

A. Two telegrams from the Badische to Kuttroff
Pickhardt, one dealing with the tariff and the othe
with order not to sell, Senate Hearings, page 253.
think that is Senate Resolution 77. I think that is th
Shortridge hearing. That is in the Shortridge hear
ing.

Q. 69. Page 253?

A. Yes, sir, 253 and 256. They appear at pag
76 of the Shortridge testimony.

MR. KRESEL: It is page 253. I offer in evi
dence the two telegrams from the Badische Com
pany to Adolph Kuttroff, both of them bein
printed at page 253 of the Hearings before sub
committee of the Committee on Judiciary. I as
that each of them be marked separately.

THE COURT: Admitted.

Received in evidence and marked "Defend
ant's Exhibits 59 and 60." (*See Exhibits, Vol. IV*
page 2426.)

Q. 70. What is the next one, Mr. Garvan?

A. Albert's letter of introduction to H. A. Metz.

MR. ANDERSON: I would like to see that letter.

MR. KRESEL: I have it here. It is page 494 of the Senate Hearings.

MR. ANDERSON: If your Honor please, I object to the introduction of that letter on the same ground that I urged on the cross-examination of Mr. Metz. It is a letter appearing to be addressed to "My dear Benefactors and Friends" and signed "Albert". Immediately following it in the Hearings before the Senate appears the following:

"Senator Watson. Do you know whether or not that letter was ever brought to the attention of Mr. Metz?" Mr. Garvan was being examined here. "Mr. Garvan: He carried it with him. Mr. Metz. Just want to say that I never saw such a letter, and if I carried it the contents were not known to me personally. I carried dozens of letters.

"Mr. Garvan. This letter was a letter which Mr. Metz carried with him. He probably never read it.

"Mr. Metz. I never saw a letter like that. Senator Watson. Did it not state that Mr. Metz would appear with a letter of introduction? Mr. Garvan. There were a half dozen letters"——

THE COURT: That is the same letter, Colonel Anderson——

MR. ANDERSON: The same letter that your Honor struck out on the cross-examination.

THE COURT: Yes.

MR. ANDERSON: I object to the letter, it being purely a personal letter between Dr. Albert, or whoever was the signer—it is just "Albert"—and his friends and benefactors, whoever they

were. I do not know anything about it. Certainly it cannot be evidence in this case.

MR. KRESEL: But this is a different situation entirely. Of course, with Colonel Metz it was not admissible, because I did not show and could not show he had knowledge of it. Now it is admissible upon the ground that that was a piece of information before Mr. Garvan—an entirely different situation.

THE COURT: As I understand, Colonel Anderson, that letter is not now offered in any sense as an impeachment of the witness Colonel Metz, but is offered for the same purposes as the other documents offered this morning, and the same ruling will be made.

Received in evidence and marked "Defendant's Exhibit No. 61." (*See Exhibits, Vol. IV, page 2426.*)

Q. 71. What is the next one?

A. Letter of Metz to Secretary of State Bryan.

Q. 72. That is already in evidence.

A. Telegram Ambassador Bernstorff to the German Foreign Office.

MR. KRESEL: I offer in evidence telegram signed Bernstorff, dated March 13, 1915, printed at page 491 of the Hearings of the Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 62." (*See Exhibits, Vol. IV, page 2427.*)

Q. 73. What is the next one, Mr. Garvan?

A. Telegram Charles Suchard to Millington Behren, Nine Berlin, April 17, 1915, House Hearings page 256 and Senate Hearings page 491.

MR. KRESEL: I offer in evidence the telegram signed Charles Suchard, dated April 17, 1915,

printed at page 491 of the Hearings before the Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 63." (*See Exhibits, Vol. IV, page 2428.*)

Q. 74. What is the next one?

A. Letter of Dr. Albert to Hossenfelder, dated April 19, 1915, House Resolution, page 492.

MR. KRESEL: I offer in evidence a letter from Dr. Albert to Mr. Hossenfelder, dated April 19, 1915, printed at page 492 of the Hearings before the Senate Committee on Finance.

THE WITNESS: Hossenfelder was the German Consul General.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 64." (*See Exhibits, Vol. IV, page 2428.*)

Q. 75. What is the next one?

A. The next one is an editorial in the New York World, April 28, 1915, House Resolution 8078, Senate Hearings page 492.

Q. 76. While you are on that, what is the next document, so as to connect that up?

A. Letter of Boy-Ed to Albert — Naval Attache Boy-Ed of the German Embassy.

Q. 77. Does that refer to this editorial of which you have just spoken?

A. Yes, sir. Well, there is another one.

MR. ANDERSON: If your Honor please, I do not object to this evidence because I do not suppose any court in Christendom would pay the slightest attention to it, and therefore we are only burdening the record. Certainly it is a novel experience so far as my limited practice of the law goes to put into evidence correspondence of this

kind, editorials from newspapers, libraries on subjects upon which I suppose there are 20,000 books, and if they can put in evidence three or four or a hundred, we can put in an equal number on the other side. It would make the administration of justice impossible if this thing goes on.

MR. KRESEL: I did not comment on the things that Colonel Anderson put in, as to which I might have made even more pointed remarks. But we are not here to discuss that. It is for your Honor to say whether this is admissible or no. I doubt whether Colonel Anderson ought to state that no court in Christendom would pay any attention to evidence which your Honor has already been admitting.

MR. ANDERSON: It was admitted without a ruling.

MR. KRESEL: It has not been admitted without a ruling. We offer this evidence, if your Honor please, not only believing that it is admissible but that it is material and relevant; that when the motives of these officials are attacked and they are charged with having been duped by conspirators, we have a right to show what information they had upon which they acted, whether that information was contained in editorials or books or records or examinations or letter or what not. They cannot stop us from showing that. That is the justification that we are entitled to show in this Court.

THE COURT: And then as a consequence of that the burden would be on the Government to show that the information upon which they acted was erroneous?

MR. KRESEL: No, your Honor, I do not claim that. I claim that it would then be for the Court to say, if there is no proof to the contrary offered

by the Government, whether that was such information, assuming now that the general question that we have been urging, that the Court cannot inquire at all——

THE COURT: I understand.

MR. KRESEL: Assuming that that has passed by, then the Court may say whether that information and all the other proof in the case makes out such a case as justified the action by these officials.

THE COURT: Assume for a moment, if you will, please, that there did exist a power; that is, that the Trading with the Enemy Act conferred a power upon persons, we will say, in the Executive Department, to make a bona fide sale, either in public or, under the authority of the President, a private sale. Then from your point of view would such a sale if made be invalid if brought about by a conspiracy such as has been alleged in the bill of complaint?

MR. KRESEL: I think, your Honor, I should need another element before I could answer the question.

THE COURT: You may qualify it as you like.

MR. KRESEL: If there was a conspiracy as to which the officials acting knew nothing at all, then I do not think that the sale, if they had the power to make it, could be invalidated by reason of the fact that somebody else had entered into a conspiracy.

But if the facts were such as to justify a Court in holding that the officials either knew or had reason to believe or were put upon inquiry as to facts which would indicate a conspiracy, I think then they would not be acting in such a way as to be able to sustain that sale. It is the same question that your Honor had up with us in argument as to the seizure here.

THE COURT: The same underlying principles.

MR. KRESEL: The same underlying principles. You see, your Honor, in some respects they do not charge in the bill direct fraud against Mr. Palmer and Mr. Garvan and Mr. Polk and the President. There are allegations that are very broad. For instance, as to the Chemical Foundation, it is alleged that it was being used as a tool of the conspirators. The Chemical Foundation, it is our contention, was the creature of the Alien Property Custodian. It comes pretty near making a charge that the Alien Property Custodian was being used in that way.

THE COURT: That is, that he either did it knowingly or was duped into doing it.

MR. KRESEL: Exactly.

THE COURT: So that he might be called either one of two things.

MR. KRESEL: Of course, your Honor must by this time have seen how indefinite in particulars the bill is as to conspiracy and as to who was in it and as to how it was effected; and just because of its indefiniteness we are somewhat groping in the dark here. There is the charge, and Colonel Anderson has very frankly stated that he reserves the right upon the argument to claim, actual fraud against everybody. And if that is, it seems to us that we should not be confined to a narrow sphere in showing what information we had before us and what actuated us in doing this.

THE COURT: I do not know the contents of the editorial.

MR. KRESEL: I brought that to your Honor's attention upon my opening. Your Honor has perhaps forgotten about it. It is not a comment on this situation. It simply calls attention to the fact that it is reported that somebody was about

to establish dye factories over in Jersey and then Albert is asked about that and he comes back with the information that there is nothing in it.

THE COURT: That is just a link in the chain of events?

MR. KRESEL: That is all, your Honor. I was not trying to prove here an editorial comment on something.

THE COURT: I will admit it subject to such objection as was heretofore made or may hereafter be taken to it.

MR. KRESEL: Since the question has been raised, I want to read to your Honor this editorial. It is only half a dozen lines.

THE WITNESS: There are two letters that go with it, Mr. Kresel. You only offered one.

MR. KRESEL: I will offer both of them in just a minute. The editorial is headed "Helping Us Out". (Reading.)

I read the letter dated April 28th, 1915 from K. Boy-Ed.

Q. 78. Who was K. Boy-Ed?

A. Naval Attache of the German Legation, German Embassy.

Q. 79. Here in the United States?

A. Yes.

MR. KRESEL: To His Honor Privy Counsellor Albert, 45 Broadway, (reading).

On the same day Albert answers K. Boy-Ed as follows: (Reading.)

THE COURT: I recall all those letters, so that you need not repeat them.

MR. KRESEL: I now offer therefore, the editorial, the letter from Boy-Ed to Albert and the letter from Albert to Boy-Ed.

MR. ANDERSON: If your Honor please, I made up my mind not to interrupt this examination this

morning, but to the end that my position on the record may be perfectly clear when I get up to the argument of this case, I want to renew at this point the objection to all this evidence, especially the last three exhibits just offered by counsel and not formally admitted.

In the first place, they are not only hearsay, but they are hearsay of hearsay. They say, it is reported by somebody that somebody else has reported to somebody else that something is going to be done.

In the next place, they are not evidence against the Government of the United States, even if they were direct testimony and offered in the most formal, legal way.

In the third place, they would not be evidence in this case because the Government of the United States has not only repudiated all these transactions by sending the man who wrote the letter home for doing those very things, which is a matter of which the Court will take judicial notice; but the Government has been so outraged by these very things, that it went into a great war and fought the war to success, because of the very wrongs done by these people.

Now, to come up here and undertake to introduce evidence of the wrongs which we have undertaken to right in war, and spent the blood and treasure of this country in repudiating and overthrowing, as evidence against the United States, is an unheard of proceeding. I do not mean to comment on Mr. Kresel's remarks. I quite realize that is not my function; nor upon the rulings of the Court.

I understand, the way this matter is proceeding, that your Honor is not at all ruling; but I

submit that even under the broad rules which have been laid down, there are some limits to the introduction of documents here. So far as this case is concerned, all this stuff cannot affect this case in one way or another; but there are limits to which we can go in the introduction of evidence of this character; and certainly that limit has been reached when the evidence is not only, as I have said, hearsay, but hearsay founded upon hearsay plus hearsay, and in addition to that, is evidence which the plaintiff in this case has repudiated at the cost of a great war.

MR. KRESEL: Will your Honor hear me on that?

THE COURT: It is your privilege, sir, if you desire to take the time.

MR. KRESEL: I do not desire to take the time.

THE COURT: Your remarks raise two questions in my mind, Colonel Anderson, if you will be good enough to help me out without discussion.

MR. ANDERSON: Yes, I will.

THE COURT: The first is in regard to the act of repudiation, of which I can take judicial notice and which I happen to recall. Instead of detracting from the value of this evidence, my immediate reaction is that it makes what might have seemed unimportant possibly of some moment. The second is, assuming that you have a charge of conspiracy here, which, as I understand you, you do not deny, what is the method of meeting it by the persons of the Executive Department, if it cannot be met by showing the various acts and facts, as well as information, which came to the attention of the Executive Department.

MR. ANDERSON: As to the first inquiry which your Honor makes, I think that any reply that I

spiracy to get control of this property, and assuming that we have proved that, that the Alien Property Custodian might have been active in the sale, with the best of motives, and not a party to the conspiracy, why, there is nothing more familiar in the law than setting aside a sale of this sort, because it was developed as a secret combination of bidders to prevent someone else from bidding. The Custodian in making the sale might have acted in the best of faith. I did not mean to get into an argument. I was merely undertaking to answer your Honor's question. It is possible that this matter has not anything to do with it. I do not know that it is material. Possibly we are taking up unnecessary time, because I do not think that it can have any bearing.

THE COURT: I understand your contentions with respect to that point, Colonel Anderson. You may proceed, Mr. Kresel.

Letter from Albert to Hossenfelder, of April 19, 1915, received in evidence and marked "Defendant's Exhibit No. 64." (*See Exhibits, Vol. IV, page 2428.*)

Letter from Boy-Ed to Albert of April 28, 1915, received in evidence and marked "Defendant's Exhibit No. 65." (*See Exhibits, Vol. IV, page 2429.*)

Editorial from New York World received in evidence and marked "Defendant's Exhibit No. 65-A." (*See Exhibits, Vol. IV, page 2430.*)

Letter from Albert to Boy-Ed of April 28, 1915, received in evidence and marked "Defendant's Exhibit No. 65-B." (*See Exhibits, Vol. IV, page 2431.*)

Q. 80. Will you proceed, Mr. Garvan, to mention the next document?

A. The next one is letter to Joseph P. Tumulty,

private secretary to the President of the United States, April, 1915.

Q. 81. That is already in evidence.

A. The next one is a letter of Herman A. Metz to Mr. Rose, who was the Foreign Trade Adviser of the State Department, April 6, 1915, Senate resolution 271.

MR. KRESEL: I offer in evidence a letter from Mr. Metz to Robert F. Rose, Foreign Trade Adviser, Department of State, dated April 8, 1915, printed at page 271 of the Hearings before the Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 66." (*See Exhibits, Vol. IV, page page 2431.*)

Q. 82. What is the next one?

A. The next one is a letter of Herman A. Metz to Secretary Redfield, who was the Secretary of the Interior.

Q. 82 (continued) Secretary of Commerce.

A. Secretary of Commerce, April 9, 1915.

MR. KRESEL: I offer in evidence a letter from Mr. Metz to Secretary Redfield, April 9, 1915, printed at page 272 of this same Hearing before the Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 67." (*See Exhibits, Vol. IV, page 2434.*)

Q. 83. The next one?

A. The next one is Mr. Metz's pamphlet of April 22, 1915.

Q. 84. That is in, and the next two are in, Mr. Garvan.

MR. KRESEL: You do not mind, Colonel, if I

straighten that out? My information is that they are all in down through 36.

Q. 85. Will you give me No. 37?

A. 37 is an article I took from the desk of Mr. Hugo Schweitzer, after his death.

Q. 86. Who was Hugo Schweitzer?

A. Hugo Schweitzer was the former president of the Bayer Company in this country, the American Bayer Company. That is the American corporation which was the agency of the German corporation.

MR. ANDERSON: That refers to an article. Would you get the witness to describe it, please?

THE WITNESS: Called "Chemists' War."

MR. KRESEL: It is printed at page 226 of that volume you have before you, Colonel. I offer that in evidence.

MR. ANDERSON: I would like to have made as clear as possible, sir, that this evidence is not being introduced for the purpose of proof of any facts contained therein, but is just merely for information, that these particular papers were before this witness, as I understand there is a limit to this evidence. I do not know that it does appear clearly on the record, I would like that to apply to all this evidence, and, of course, I am not making my objections to each question under that understanding.

THE COURT: Have you anything to say, Mr. Kresel?

MR. KRESEL: I have already, your Honor, indicated my position.

THE COURT: That the admission of the Government reports and the offer that you are now making are limited to——

MR. KRESEL: Showing what information the witness had before him.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 68." (*See Exhibits, Vol. IV, page 2438.*)

Q. 87. The next one?

A. "The New Chemical Warfare," an article by Julius Stieglitz, in the Yale Review.

MR. KRESEL: I offer that article in evidence, beginning at page 493 of the Yale Review of April, 1918.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 69." (*See Exhibits, Vol. IV, page 2457.*)

Q. 88. The next one, Mr. Garvan?

A. "German Militarism and its Influence upon the Industries," another article by Hugo Schweitzer, which was taken from his effects after his death.

MR. KRESEL: I offer in evidence the article just described by Mr. Garvan, which is printed in the Hearings before the Sub-Committee on the Judiciary, beginning at page 241 thereof.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 70." (*See Exhibits, Vol. IV, page 2477.*)

Q. 89. The next one?

A. "The President's Protest to Great Britain and its Justification by the Perils to our Trade and Industries," a third article by Hugo Schweitzer, which was taken from his effects after his death.

MR. KRESEL: I offer in evidence the article just described by the witness, which is printed in the Hearings before the Sub-Committee of the Committee on the Judiciary, beginning at page 233 thereof.

THE COURT: Admitted.

Received in evidence and marked "Defend-

ant's Exhibit No. 71." (*See Exhibits, Vol. IV, pag*
2491.)

Q. 90. The next one?

A. Consul-General Hossenfelder's Report t
Bethmann-Hollweg, March 3, 1916, House Hearing
page 495, Senate Hearings, page 261.

MR. KRESEL: I offer in evidence the repor
described by the witness, which is printed at pag
261 of the Hearings before the Sub-Committe
on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defend
ant's Exhibit No. 72." (*See Exhibits, Vol. IV, pag*
2514.)

Q. 91. The next one?

A. Albert's report to the German Governmen
on the dyestuffs situation, April 26, 1916.

MR. KRESEL: I offer in evidence the repor
just described by the witness, which is printed i
the Hearings before the Sub-Committee on th
Judiciary, beginning at page 259.

THE COURT: As evidence of the facts therei
stated, or as information that was before thi
witness?

MR. KRESEL: As information before this wi
ness.

THE COURT: Admitted.

Received in evidence and marked "Defend
ant's Exhibit No. 73." (*See Exhibits, Vol. IV, pag*
2525.)

Q. 92. The next?

A. Letter to Foreign Secretary Zimmerman, o
Germany, by Ambassador Bernstoff, May 21, 1916.

MR. KRESEL: I offer in evidence the letter jus
described from Zimmerman to Bernstoff, date
May 21, 1916, printed at page 265 of the Hearing
before Sub-Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 74." (*See Exhibits, Vol. IV, page 2529.*)

Q. 93. Next?

A. Bernstoff's explanatory report in answer thereto.

MR. KRESEL: I offer in evidence the report of Bernstoff to the German Foreign Office, dated June 21, 1916, printed at page 265 of that same volume.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 75." (*See Exhibits, Vol. IV, page 2530.*)

Q. 94. Next?

A. Letter of Kuttroff to Dr. Albert, September 20, 1916, Senate Hearings, page 225.

MR. KRESEL: I offer in evidence a letter from Mr. Kuttroff to Mr. Albert printed at page 225 of the Hearing before the Sub-Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 76." (*See Exhibits, Vol. IV, page 2534.*)

Q. 95. The next one?

A. Dr. Schweitzer's report to Bernstorff, January 26, 1917, page 526.

MR. KRESEL: I offer in evidence report of Dr. Schweitzer to Mr. Bernstoff, which is printed at page 526 of the Hearings before Committee on Finance.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 77." (*See Exhibits, Vol. IV, page 2534.*)

Q. 96. The next one?

A. I think 49 and 50 are in, aren't they?

Q. 97. Yes.

A. Letter of Dr. Stieglitz to Mr. Palmer, and Dr. Stieglitz's report on Salvarsan enclosed.

Q. 98. That is in. What is the next one?

A. The next one is the report of the Allied Commission on German dye factories by Lord Moulton.

MR. KRESEL: I offer in evidence the report just described by the witness, which is printed at page 286 of the Hearings before the Sub-Committee on the Judiciary.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 78." (*See Exhibits, Vol. IV, page 2543.*)

MR. KRESEL: I offer in evidence a report by Mr. C. H. Burr on German business in the United States, which is printed at page 476 of the Hearings before the Sub-Committee on the Judiciary.

THE COURT: That has been identified by him or are you offering it apart from the identification?

MR. KRESEL: That has been identified by him, your Honor.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 79." (*See Exhibits, Vol. IV, page 2544.*)

Q. 99. Mr. Garvan, I wish you would state briefly what, if any, information you had on April 10, 1919, concerning the relations, if any, of Germany to the organic chemical industry of the United States prior to the outbreak of the war in 1914?

MR. ANDERSON: I note the same objection that I noted on Friday, your Honor, to the generality and indefiniteness of this question.

THE COURT: Is this the same question?

MR. KRESEL: No, your Honor, it is a different question. I have made it as nearly not leading as it could possibly be done. Would your Honor desire to have it read?

THE COURT: Yes.

(Q. 99 repeated as above recorded.)

MR. ANDERSON: In order to make the record clear, sir, I will make the objection specifically to that question: First, on the ground that it is too general and indefinite, and therefore is objectionable as to form. Second, because the witness has testified that his connection with this matter began in November, 1917, and, therefore, his knowledge on the subject is necessarily hearsay and not facts. Third, the general and specific objections which I have already urged and which I understand your Honor does not wish repeated as to all this testimony.

THE COURT: Apart from the general objection, I think the objections of the Government are not well taken. I think this is much more limited than the question of Friday. You may take the answer.

A. The information that I had was to the effect that prior to 1914 Germany had five or six agencies here, which represented the five or six companies commonly called the Big Six, which had control of the chemical industry of Germany. My information was that those six companies had been combined into a coalition or agreement, three each in two combines, and that together they controlled practically the entire organic chemical industry of Germany; that the agencies here had no independent existence of their own, but were the merest agents and servants of the German industry; that the German industry had monopoly of the American organic chemical industry, par-

ticularly as to dyes; that there were here nothing but three or four assembling plants who were dependent entirely upon the intermediates which they, in turn, got from the six German companies in Germany.

My information was that this industry in Germany had been built up carefully and slowly since about 1856, when it was founded upon the discovery of William N. Perkins, of the Color Mauve. He was an Englishman working in a German's laboratory in London, named Hoffman, and the English were not sympathetic to his development, and he took the English Perkins discovery back to Germany, and there Germany began to develop it.

My information showed that whereas in America we had absolutely no understanding of the relation of organic chemistry to industry or to national defense, or to the progress in medicine, that each and every one of the Germans with whom I came in contact had an absolutely complete understanding that it was the life blood of modern industry and that it was the foundation of modern war, and that it was the hope of future medical development; that they were brought up to regard that as the special province and the special asset of Germany; that each boy and girl in Germany was compelled from the time they were twelve years old until the time they were eighteen——

THE COURT: It seems to me this is rather far afield, Mr. Kresel. Do you not think so?

MR. KRESEL: Well, I want to be entirely frank with your Honor. I do not think that it is. I think that to judge what these people did your Honor must know what they had in mind, your Honor must know what they had before them. Your Honor must realize what they were trying to accomplish. What he is now doing is contrasting the situation in Germany with that in the United States, what

he learned. He is showing how Germany regarded the organic chemical industry and the education connected with it and how we neglected it here. It naturally leads up to the reasons which actuated them in disposing of this property in the way that they did. I will ask Mr. Garvan to be as brief on this historical feature as possible.

THE COURT: If there is doubt about its materiality it may be taken, because that is the question that we have reserved; although at the moment it seemed to me he had probably gone farther afield than would be of service.

THE WITNESS: All I meant to say was——

MR. ANDERSON: May I make one brief statement to your Honor. I do not know that I have made it clear to the Court that in this case it seems to me obvious under the statute that the only reasons actuating these people in this sale are the reasons stated in writing by the President, or by the person issuing the order upon which the sale was made. The only evidence which can have any bearing here is evidence in connection with those particular matters, and whether that is admissible or has any bearing, I am not now undertaking to argue.

The Congress has declared that in the case of a private sale the reasons therefor in the public interest must be stated in writing. If they had stated no reasons in writing the order would be void ab initio. The sole question is, What were the reasons stated in writing in the order? I do not think I have heretofore made that clear to the Court—at least it is suggested by one of my associates that I have not. That is all I have to say.

THE COURT: It seems to me that you did not confine your position to that, Colonel Anderson.

You said it was within the judicial province to test the sufficiency of the reasons stated, but it seemed to me that you took a further step and said not only was it within the province of the judiciary to determine the sufficiency of the reasons stated, but also as to whether those reasons were justified by the facts underlying their statement. If that is your position, then I do not see where the limit is to the inquiry into the underlying facts, do you?

MR. ANDERSON: It depends on what you would call reasons for underlying facts.

THE COURT: No, not what I call it.

MR. ANDERSON: When I say you, of course I mean what one would call it in disposing of the question. I did not mean it to be personal to your Honor. I confined my inquiry to a large degree in this case, if I did not entirely, though the case is so confused that I cannot say I did now, to the reasons stated in the order——

THE COURT: Would you care to limit them at this time, to abandon at this time your prior contentions of your right and purpose to go behind the reasons stated in the Presidential orders and Mr. Polk's orders?

MR. ANDERSON: No, not to that extent I do not. But I do say this: that beyond that question the sole inquiry, as I can now think of it, would be what facts were represented as a basis for those reasons and not what this witness knew or what he may have known. But if the reason assigned is founded upon a mistake of fact or a misconstruction of the law, I think it would be a subject of inquiry. All this is something that this gentleman heard from somebody else about conditions existing prior to 1914, and I am a little

puzzled to know its connection. But I did not intend to get into that argument, if your Honor please. I merely wanted to make clear my view on that point which I was told by one of my associates I did not make clear.

THE COURT: I think you did make it quite clear. Then I cannot ignore or forget, in respect to this testimony, the allegation of conspiracy which seems to me, possibly, to prevent my being able to say at this time that it is clearly and wholly irrelevant.

You may proceed, Mr. Garvan.

A. (continuing) My information was that the system of education in schools and colleges and universities had been aided and fostered by the Government as an aid and feeding to this organic chemical industry; for instance, of the graduates of the universities, any one who desired was permitted to go to the dye factories and spend two years in research at the dye factories' expense.

The Government, the University, the schools and the High Schools and the factories all worked with a single unity of purpose and more or less with a single unity of Governmental control, with the intent and object of attaining what they had practically attained at the beginning of 1914, that is, a world monopoly in the organic chemical field; and that they had done this deliberately and with an intention, as shown by Senator Aldrich's book that he introduced in 1910, of eventually combining into one cartel with a singleness of purpose; and that as soon as that monopoly of the organic chemical industry had been attained, to use that monopoly to the aid of its other industries which are dependent upon dyes and pharmaceuticals, such as the textile and leather industry, and so forth.

This was shown further by the fact that all the

dye salesmen practically were all educated with that singleness of purpose. They were sent to the Government in Berlin and instructed in reporting on conditions in foreign countries. They were then sent to the dye factory and drilled, and they came here as salesmen. We found the trunks of thirty of them in the basement of the Bayer Company filled with their reports back to the German Government on trade conditions in each trade and industry here. They were the men who taught the industries how to apply the dyes either to the leather or to the cloth. That made the element of saleability on the leather or the cloth, and therefore they had the full run of, say, a carpet factory. They would report back every invention of machinery, the design, style, cost and so forth and so on; every detail that a German manufacturer attempting to rival or compete with an American manufacturer of carpets wanted was reported to Berlin by the dye salesmen. That information was usually card indexed—I have forgotten the name of it—so that they could go to that card index, ascertain the report of the dye salesman and get a report, for instance, on how the people of Wilmington like their carpets, the design and the cost here, and so forth and so on. So that he was able to sit there in Berlin and compete with each section of the world under the most favorable circumstances and with a full knowledge and with full information of what the report showed.

MR. ANDERSON: If he is going to testify to the contents of reports, I ask that they be produced. We have to have some opportunity to see the sources of this gentleman's information.

MR. KRESEL: You mean that you ask——

MR. ANDERSON: I ask you to produce the contents of all reports as to which he testifies. If we are going into this matter, we will get into

it. I object to any evidence as to reports or written documents that are not produced in court.

THE WITNESS: Your office is full of them.

MR. KRESEL: Wait a minute. Whatever reports this gentleman had in his official capacity are not now in his possession. They are in the possession of the Government, and it is not up to us to produce them.

THE COURT: Do you want to make any demand now for their production?

MR. KRESEL: If counsel presses the objection or suggestion that we have got to produce these reports, I now ask that the Government produce them.

MR. ANDERSON: If your Honor please, if this evidence has any materiality whatever, there must be some opportunity to test it. This gentleman has testified as to reports to the German Government found at the Bayer Company, and reports to other people, I do not know who they were. If it has any materiality at all, to test the evidence, we must have the report. He cannot testify to the contents of reports without producing them. Therefore, I will ask that he do not give evidence as to the contents of written documents unless the documents are here to be examined.

MR. KRESEL: Colonel, you say that you must have. I say that you have. You have them in your possession.

MR. ANDERSON: I am informed, Mr. Kresel, that we have no such reports as those described by the witness.

MR. KRESEL: I am sorry that you cannot locate them. We are not chargeable with that.

I think, your Honor, that perhaps this is as good a time as any to settle this question of the

necessity of producing written documents. My understanding of the rule is that upon collateral matters, the best evidence rule does not apply.

THE COURT: Do you disagree with that, Colonel Anderson?

MR. ANDERSON: That is the general rule, but there are so many exceptions to it. I think in this case this witness cannot testify to the contents of documents without producing them.

MR. KRESEL: Then this is one of the exceptions, if you are going to call it an exception? I rather regard it as a general rule.

THE COURT: Colonel Anderson, may I make this inquiry? It is unquestioned that a contract or statute which is in doubt may be placed back in its original setting to ascertain its intent, meaning and purpose, is it not?

MR. ANDERSON: Yes, sir.

THE COURT: That is the general rule.

MR. ANDERSON: The general rule, I admit, sir.

THE COURT: Do counsel in this case disagree as to the meaning, interpretation, aim and purpose of the amendments to the Trading with the Enemy Act of 1918, as I understand you?

MR. ANDERSON: I do not think we disagree, sir. I do not think we disagree as to the amendment of March. We might as to the construction of the clause as to the President and private sale. But the act gave general power to the Alien Property Custodian to sell. I do not think anybody questions that.

THE COURT: As I understood you, I rather got the impression that the interpretation of that act was the basic question in this case.

MR. KRESEL: That was my understanding throughout. I have understood Colonel Anderson

to argue and to contend that under that amendment of the act the Alien Property Custodian still remained a trustee, with the absolute duties of a trustee to sell for no less than the property was actually worth.

He contends that notwithstanding the provision that the President, in the public interest, might otherwise direct, all that means is that the President can direct that it be a private sale and not a public sale, but that it still had to be, as he called it, a fair sale and that a fair sale meant full value and that a fair sale meant that there could not be, as he claims, what he terms here a combination of bidders.

He denies that that amendment gave any broader powers than had theretofore been had except that it amended the act so as to provide the method of disposition.

I understood him to decline to give any force to the sentence in that act giving to the Custodian the same power over the property as if he were the absolute owner. Of course, it must follow that if he is but a trustee, he cannot do anything with the property but if he sells it, to sell it for every cent that it is worth. That certainly is not consistent with the provision that he may do with it as an absolute owner may do with it.

THE COURT: The purpose of my inquiry was this. Under the interpretation of that act, unless its meaning is clear and fully disclosed by the language used in the act, must we not inquire as to the full conditions surrounding its passage and the evil that it was intended to remedy, or not? Or, is that too broad a field?

In other words, must we not remember, in the interpretation of that act, that it was a war act, that it was intended to cure evils which had

been demonstrated to exist during the war, or not? Or, must we interpret the act as if it were passed yesterday instead of in 1918?

MR. ANDERSON: I think we have to interpret the act at the time it was passed. If there be any doubt as to the meaning of the act—and in view of the fact that the distinguished counsel for the defendant seems to take issue with me on its interpretation on every point, there seems to be some doubt—if there be any doubt as to its meaning, then, of course, the Court may, to a very limited extent, and with great caution, look to the immediate surrounding facts and circumstances. But if the conditions of education in Germany prior to 1914 and going back to 1902 will aid the Court in arriving at that interpretation, I will not object to that.

THE COURT: I have indicated my doubt about that, but in view of the issues, particularly of conspiracy, and the construction of this act, I doubt if I am able to say at this time with absolute certainty that it is fully without weight.

Now, then, we have departed from the primary objection, namely, the production of these documents. But before going into that, I want to ask this. Can I get you to help me, if you will, Colonel Anderson?

MR. ANDERSON: I will with great pleasure, if your Honor please.

THE COURT: Assuming that it is true, notwithstanding the broad powers conferred upon the officers in the Executive Department or on the President to make a sale and to make a private sale, that, as I understood you to say, they were still not authorized to make sales so as to create a monopoly—that is, even a public sale—the pub-

lic sale would have been invalid if such sale resulted in a monopoly; is that your contention?

MR. ANDERSON: Undoubtedly, sir. Speaking in a broad way, that is true.

THE COURT: Now, then, do I understand you to say—I do not believe I have asked you this question—that the sale in question resulted in a monopoly or produced a monopoly?

MR. ANDERSON: Perhaps it would be more accurate to say that the object and purpose was to create a monopoly and control over foreign and interstate commerce. In other words, restraint of trade, using that term in its broad sense, of foreign and interstate commerce is an essential step in a monopoly. There can be no monopoly without restraint of trade, but there may be restraint of trade without a monopoly.

THE COURT: I have missed what you said.

MR. ANDERSON: I say that restraint of trade —and by that I mean foreign and interstate commerce in the Federal sense—is an essential element in a monopoly.

THE COURT: Is that not a necessary incident of process and product patents?

MR. ANDERSON: Necessarily, it is incident, but you cannot combine them all under one control without seeking to accomplish thereby a purpose which is forbidden by the laws of the United States.

Any individual can go to the Patent Office and get any number of patents in pursuance of the law. But if those individuals, say a dozen individuals, holding patents controlling a certain industry, combine those patents for their common use, and thus create a restraint upon production, or combine those patents into a holding

company for their common use, for the purpos
of restraining foreign or interstate commerce
creating a monopoly, which is the next step b
yond, then their act in that regard is illegal und
the Sherman Act.

THE COURT: Won't you help me just a ste
further, Colonel Anderson? If these patents we
taken out of the hands of Germany, and if the
were enough to go around to every inhabitant
the United States, if there were distributed one
each inhabitant of the United States, under t
powers conferred by those patents, if they we
valid, they would have a restraining influence a
effect upon importations and consequently up
foreign commerce, and would have made a mono
oly as complete as were the patents with respe
to foreign commerce; is that not so?

MR. ANDERSON: Yes, sir. Possibly that wou
be true if they were distributed; yes sir.

THE COURT: There can not be any doubt abo
it, Colonel.

MR. ANDERSON: That is right. Each man w
owned a patent would have been able to put a t
on importation as to his patent.

THE COURT: As to his patent. Consequent
the extent of the restraint upon importations wou
have been precisely what it would have been if y
had bought them all.

MR. ANDERSON: That would depend upon wh
importation license each individual would impos
It might or might not be.

THE COURT: Now then, Colonel, we are d
parting from the sale into actions later on.

MR. ANDERSON: That is exactly what the She
man Act contemplates. I may own a patent a
put an importation license on one element of trad
These were both product and process patent

your Honor will recall. I may put an importation license on one element of trade—I have the right to do it under the patent law. I may own a group of patents and put an import license upon the importation from England, Germany, Switzerland, Italy, and so on, on the products covered by the group of patents. But that is a right given to me by the laws of the United States.

But, if I and a dozen other people have each a group of patents which control a certain part of a certain commercial product in the United Seates, and we get together and say, "Here, we will control all these importations and impose at the port such restrictions as will practically make importation impossible from any foreign country—and we also have the process patents and will manufacture in the United States," then by that combination for the purpose of restraining interstate and foreign commerce, and for the purpose of creating a monopoly in the United States, they would be guilty of a wrong of which each individual, limiting himself to his particular act, would not have been guilty. That is the ordinary interpretation of the Sherman Act.

THE COURT: Does your evidence offered in this case show that the defendant here has been guilty of such acts?

MR. ANDERSON: Of course, I am not undertaking to review it and the Government does not expect me to, but the evidence in this case shows that whereas on the manufacture in the United States under the process patents they imposed royalties of from two to three to five per cent. on all importations they imposed a royalty of ten per cent., whether from England, Germany, Italy or anywhere else, and that, among other royalties, they imposed ten per cent. upon the reparation

dyes owned by the Government of the United States and brought into this country from Germany for the purpose of maintaining its industries amounting to $215,000, according to the present testimony; and this defendant is the only one that collected a cent of profit, so far as this record discloses, or that I know of, upon reparation dyes.

Therefore, if they combined and made a contract of sale for the purpose of putting into the hands of this agency, which was nothing in the world but an agency of the dye manufacturers of the United States, and the evidence here discloses it all these patents for the purpose of preventing importations into the United States, and the other facts and circumstances show that purpose conclusively or establish it to the satisfaction of the Court, then this contract of sale was a part of a scheme which is forbidden by the laws of the United States and absolutely void *ab initio* under the Sherman Act. That is my position.

THE COURT: Then that discloses more fully your purpose in introducing the minutes of the Dyes Institute?

MR. ANDERSON: Yes, sir. We are going to contend that the minutes of the Dyes Institute, when your Honor comes to read them, are the most important evidence in this case, because they show what was going on from the time this was conceived until it ended.

THE COURT: Assuming that the defendant was a separate instrumentality and agency created at the request of the Executive Department of the Government, that it was established on lines and plans that were deemed as far as possible to prevent a monopoly, and yet that agency or instrumentality, or defendant here, did after it was created do certain acts which were forbidden by the

Sherman Act, is the redress the setting aside of the sale, or is it direct action under the Sherman Act?

MR. ANDERSON: Your Honor has assumed a premise and I submit that the premise is not complete. Although it may not be a material difference, I cannot answer a question predicated upon the idea that this thing was conceived by an officer of the Government of the United States. I think the contemporaneous documentary evidence is abformerly given by these very witnesses is conclussive to the contrary, as showing that this thing was built up and developed in all its phases on the suggestion of the dye industry of the United States.

If the officers of the United States, mistaking their legal duties and obligations, entered into an arrangement with the dye industry, a contract or arrangement for the consolidation of these patents in the hands of an agency composed of all the manufacturers in this business, for the combine of those manufacturers into a group, organizing this hand to hold all these patents, not only the control of the manufacture to the extent that the patents controlled it, but to control the importation—I say that from the very inception the thing was illegal and that this contract of sale was illegal from the very time it was conceived and on the day it was executed, no matter who authorized it, because nobody could do a bigger thing than an Act of Congress might do. That is my position.

MR. KRESEL: I wish, your Honor, that Colonel Anderson had directly answered your Honor's inquiry. I should have been interested to hear it.

MR. ANDERSON: I want to say something on that point.

MR. KRESEL: Your Honor's inquiry was

whether it was his contention that the act of the officers here resulted in creating a monopoly. Colonel Anderson has not answered that question. And while we are on this proposition, your Honor, I had it in mind at the first opportunity to point out that Colonel Anderson has been arguing right along that the very fact that Congress permitted the taking out of patents, it was the intent of Congress to give the holder of the patent the monopoly.

Colonel Anderson loses sight of the fact that the latest pronouncement from Congress upon the subject with reference to German or enemy-owned patents was to destroy that monopoly, since by the very Trading with the Enemy Act Congress gave to the Federal Trade Commission the power to issue non-exclusive licenses to any American citizen on those patents.

In other words, Congress by its act destroyed the monopoly that had theretofore been given to the Germans. So that if we are to judge the situation as it appeared to these officers when they put this transaction through, the fiat of Congress at that time was that the monopoly that had been given to the Germans should be taken away from them, and it is going to be our contention that it was with that purpose this corporation was organized, upon the very lines indicated by Congress in the Trading with the Enemy Act, which, at the very basis, was the issue of non-exclusive licenses on these patents so that nobody would have a monopoly.

I say I would have been interested in hearing what answer Colonel Anderson would make to your Honor's direct question. Because I cannot conceive that he would argue that The Chemical

Foundation maintained any monopoly. The Chemical Foundation is not in the manufacturing business, it has never manufactured anything. It has never turned a wheel. It is simply a holder of these patents, and deals with them, as we shall show, as it has been outlined in our certificate of incorporation.

Indeed, your Honor will find when this case closes that so far from there being a monopoly here, there is the keenest competition in this country, not only in the matter of dyes but in the matter of pharmaceuticals, in the matter of anything that pertains to the organic chemical industry in the United States.

I can well understand why Colonel Anderson did not feel that he desired to answer the direct question.

MR. ANDERSON: I would like to respond to this.

MR. KRESEL: What brought about this very interesting discussion was the question whether we were compelled to produce writings as to which this witness is testifying.

THE COURT: Yes, but I was more interested in the underlying question of the relevancy of these facts, which seems so far afield, and I could only form an impression about the relevancy if I could have it——

MR. KRESEL: Crystallized.

THE COURT: Crystallize—crystallize it and get a comprehensive idea of the issues, as I have been trying to do from day to day.

MR. KRESEL: Yes.

THE COURT: And, Colonel Anderson, I do not understand now whether it is your contention that The Chemical Foundation is a monopoly, or by its creation, in taking over the German patents, a

monopoly was created, and if it is your thought that thereby a monopoly was created, I have been trying to determine for myself as we go along, tentatively, what sort of an organization, what sort of disposition, or in what manner the Government of the United States now says the German patents should have been disposed of so as to avoid a monopoly. In answering that question, if you will—and I should appreciate it if you would answer it—tell me whether if you bought one patent and I bought another, we each would not have had a monopoly, and a complete monopoly with respect to the matters embodied in or covered by such patent. If so, what is the thought of the Government now with respect as to what should have been the disposition of these patents?

I do not ask that to inquire into the Government's purposes or plans, but in order that I may weigh that plan, and by so doing determine whether or not a monopoly is created or was created by the sale of the Alien Property Custodian.

MR. ANDERSON: I will answer your Honor's question to the best of my ability. As your Honor's inquiry involves the suggestion of distinguished counsel for the defendant that I have not replied directly, I will say that in my view of the evidence in this case it shows that the purpose of the organization of The Chemical Foundation, certainly in so far as those who financed it and brought about its organization are concerned, was to control and monopolize the dye industry of the United States, both in production and distribution, first through the control of the process patents to the extent that they did control them, and, second, through the control of importations from foreign countries; that therefore the object and moving purpose in this entire transaction was to restrain

the foreign and interstate commerce, to control manufacture and distribution as a step in the monopolization of the dye stuffs and chemical industry of the United States.

Now, I think I have answered your Honor's question in a perfectly plain way. Control of those elements is a process or step in the monopolization; and the monopolization may never be accomplished, yet every step in the scheme to accomplish that result is expressly forbidden by the laws of the United States.

THE COURT: Even the seizure of the patents?

MR. ANDERSON: I am coming to the patents. If the seizure of these patents was conceived and carried out for the purpose of creating that result, as your Honor has suggested that thought, I will say it may be that primarily if it could have been a sale to a proper person, as against the United States, it may have affected the seizure; but there is no person who can contest the right of the United States to seize these patents under the Alien Property Act, because the German cannot sue the United States to recover them, he being the original owner, nor can he, under the terms of the Treaties of Peace question the acts of the United States in that regard. Therefore, the act of the United States in making the seizure, even though it may have been infected, if I may use the word, by this purpose, and if it had been the act of a private person, might have been void *ad initio,* but cannot be assailed as to the United States, because nobody can sell it. It is just like a case where the United States commits a tort, nobody can sue the United States. It may be wrong as to a private person, but not as to the United States, because you have no redress. It may be a wrong, but there is no remedy.

Therefore, there is nobody here questioning the title of the United States, and there is nobody here can question the title of the United States; because the defendant claims through that title, and there is nobody outside, even if your Honor could consider that, who could question the title of the United States.

So the question of the validity of the seizure, even if done for a wrongful purpose, and assuming it might have been so done, which I am not claiming here and not discussing—because it is not before the Court and cannot be before the Court, the question of the validity of this seizure as a matter of law—it may be interesting as showing a development of facts dealing with the ultimate conspiracy and only interesting in that aspect, but if proved here to be absolutely invalid the Court could not enter a decree based on that between these two parties.

If I have made that clear I will come to your Honor's second question. Before I do that and as an incident to it, I wish to refer to the suggestion of counsel as to the Federal Trade license. Congress authorized the President and he in turn with authority of the act vested in the Federal Trade Commission the power to issue licenses under enemy patents during the war, either exclusive or non-exclusive in the discretion of that Commission. So far as I know they issued non-exclusive licenses. That was during the period of the war, but they issued them and issued them for the life of the patent. Probably they had that right, but, as so often stated, that right had been subject to the review of the Court at the end of the war by suit within one year, by the owner, for revision, for cancellation of the license, or for such re-adjustment thereof as the Court might

determine to be just and equitable. Therefore, the right of the owner was absolutely preserved as against the United States, the purpose, and the entire legitimate purpose, being to make these patent rights available during the period of the war, if it were deemed desirable by the Federal Trade Commission to issue licenses. But the whole matter was left in the hands of the Courts of the United States, which have never yet failed to respond to their duty in that regard, to do justice to the enemy at the end of the war.

They had to charge reasonable royalties, and those royalties went into the Treasury of the United States, held as a fund, to be paid ultimately to the owner, whoever that owner might be determined to be. If that royalty was not reasonable it was revised by a Court of Equity, and there at last the owner, although he was the enemy whom we have heard so much about, might come into the courts of this country and have his rights protected when peace was once more restored.

But what is the situation here? Entirely different. I will not go over that. But now I come to your Honor's question as to an individual patent. If I have not made myself clear I want to make it clear that I agree with one thing that Mr. Palmer said while he was on the stand, and possibly with a good many others, but the one is that the whole value of the patent is in the monopoly right. That is all it is. You take that away and there is nothing left—except if you grant nonexclusive licenses to anybody and reserve title to the patent, you still have the right to collect the royalties that people will be willing to pay, and therefore, it does not necessarily follow, though it may and I think does follow in these cases, that

it is largely destructive of the value of the patent, if the patent be of such character that non-exclusive licenses will increase the production, and even at the low rate which would thus be obtained, give quantity production in the place of small production, and thus make a small royalty greater than the profit on a small production—in that case it might be that the value of the patent to the owner would still be very great. But those are questions of fact in each particular case.

As to the monopoly situation, we will assume I own a patent and, as your Honor suggested, you buy a patent. We will assume that it was a patent on an essential dye product, that is, an importation product. I would have the right, if it were a product patent, to levy royalty at the port on all importations of that patent. If it were a process patent, I would have a right to charge a royalty for the manufacture in the United States, and, assuming it to be broad enough, nobody could either manufacture or import except by paying me a reasonable royalty. As a matter of fact, I might even make it an unreasonable royalty, because Congress gives such patentees large rights in the interests of the developing of industry. You do not have to use the patent; there is no obligation to use it, if you do not want to. The benefit to the public is that there is full use after seventeen years, and Congress has determined that seventeen years is a reasonable time, so we cannot inquire behind that.

But there I have the right to control a certain product. That principle might be carried possibly to the point that if I got patents individually, was so brilliant that I could invent and devise every known element in a certain large and valuable part of the business of this country, I might grow enor-

mously wealthy, just like Henry Ford has done by inventing the one ignition system such as he has controlled, and so might others who have not allowed anybody else to use their patents. But that is the law. However, if I own forty-five hundred and another owns forty-five hundred, or a thousand of us own together groups of patents which combined make up forty-five hundred and control, as alleged in this report of Mr. Palmer, practically control and hold by the throat the dye and chemical industry of the United States through those patents, and as five hundred or a thousand of us own them we say, "Here, there is no use of one of us trying to levy one toll on one of these products and another levy another toll, which will drive the royalty down, the thing for us to do is to have a uniform royalty among us all and a uniform price in the country, and also inside, in its manufacture, and therefore we will combine all these into a corporation which we will call a corporation greatly beneficial to American industry."

I know of no place where terms of patriotism and public spirit are more extravagantly used than in these minutes of these great corporations, always as a reason for actual and improved public service. Possibly it may be true. But we combine them all and we control the importation of those essential products into the United States, we fix a uniform royalty, we eliminate competition, we cannot cut under each other, one cannot bring it in at 5 per cent. and the other charge ten, and thus produce competition which reduces the royalty charge, but all fix the rate at 10 per cent., and if that does not cut it all out we charge fifteen—as Richelieu says, it is like glass, the sun shines through it, the purpose is too obvious to discuss, and it becomes a restraint upon foreign commerce

from its very inception and, actuated by that purpose, it is therefore illegal.

THE COURT: Isn't that the purpose of Congress in the Trading with the Enemy Act requiring the Americanization of the chemical and dye industry?

MR. ANDERSON: I am perfectly willing to concede that Congress did not require but authorized There is not a requirement in this act for the sale of a piece of property. These patents could be held by the United States until Congress acted. They were in its hands and were not ready to substitute some other agency in the place of our Government to fix our policies and exercise its functions. They had these patents, they had complete control of them. They have reserved control of them in the act. Why did Congress have to get rid of them?

THE COURT: I beg your pardon?

MR. ANDERSON: Why was it necessary to get rid of them? I do not mean to ask your Honor a question, but that is merely argumentative.

THE COURT: No, you have disclosed your thought. But unless it was the purpose or thought of Congress that some of them, or all of them should be disposed, why authorize either a public or private sale?

MR. ANDERSON: We are getting now to the act and I will answer your Honor's question very briefly. It was urged in Congress, in the very parts of the record introduced here by counsel, and as to which others will be introduced by us since they have started it, and your Honor will find when you come to read it, that originally until this act went to conference it did not have any provision for private sale, it was purely public sale until it went to conference——

MR. KRESEL: It did not have any provision at all.

MR. ANDERSON: Originally did not have any provision except to prevent waste. Then when the amendment asked by Mr. Palmer for the purpose of Americanization of American industry, whatever that may mean, and I think I understand what it means, it was simply to sell this property as your Honor would foreclose a mortgage on a railroad, and turn it over to another purchaser who could develop it free from the restraint of Courts and substitute in its place its value. The record shows that. That is a perfectly legitimate thing.

THE COURT: Do you mean in the construction of a statute a Court should be restricted by what Mr. Palmer said?

MR. ANDERSON: No, sir; I do not. I think it was absolutely illegal testimony on the subject, and I objected to it on that ground. But I am arguing now from my construction. I said I agreed with his view on that one point there.

THE COURT: I thought you were giving me that as an answer to my inquiry.

MR. ANDERSON: No, sir.

THE COURT: If Congress intended that the patent should be seized and not sold, why insert in the Trading with the Enemy Act authority to sell at public or private sale, or either?

MR. ANDERSON: Now, sir, I will answer your question. It was represented to Congress, and appears in this record, that when the Act of March 28, 1918, was passed there was no more talk about patents than if there was no such thing. I would ask that your Honor keep in mind that the question of patents never arose until after the war was over in the real sense. This whole thing was after

the war was over. All this very eloquent discussion by the distinguished gentleman who was on the stand, in March, 1918, about the Germans marching to the channel ports, was just one year before this took place, and at the time this transaction under review by this Court took place the Germans had surrendered and we were in control, the enemy on the run.

THE COURT: But won't you answer the question——

MR. ANDERSON: I am coming to the question. It was represented to Congress and stated by Mr. Underwood on the floor, which statement has been read here, and I will introduce another one to the same effect, that the Conference Committee put on this provision, that the President might direct a private sale for the reason that conditions might arise in which it would be advisable to make a private sale, where the expense would be too great for a public sale, where there was some particular circumstance so that you could make a sale for better terms in a private sale than you could in a public sale, and that since the amendment putting it in conference, and which was being earnestly fought, required the President personally to state his reasons for the private as distinguished from a public sale in writing, that it would be an adequate protection to the owners of this property. That was it in substance.

Your Honor will find we have introduced, and we will further introduce since the change of agreement on the record, Executive orders in which the President has ordered the sale of a few cases of tobacco or some bales of cotton, things of that kind, stating specific reasons why a private sale would be better than a public sale, and Mr. Palmer urged in one of his letters to the President

that it was very desirable, and it is in the record here, to have the power at least to make a private sale in some instances, because in qualifying directors in these various 30,000 corporations that he had, he would transfer a few shares of stock to the directors and sell it to them, and he could not sell it at public sale. Those are the reasons for the provisions in the act.

THE COURT: I am not concerned with the provisions for the private sale at this moment, because as I understand you, Colonel Anderson, you say that if this Chemical Foundation had been chartered under the exact terms and conditions under which it was chartered, and these patents had been put up singly by the Alien Property Custidian and bid in by The Chemical Foundation, there would be no difference in the nature of the monopoly thereby created, and therefore no difference in the voidability——

MR. ANDERSON: On that particular point, as to the anti-trust law, it may be that the purchase of any number of patents might have had that effect, but I do not mean to say that that would be analogous to the facts disclosed by this case in any sense. In that event the act provided that the Alien Property Custodian, with the approval of the President, could reject any sales, and if he saw a condition being brought about which he thought was dangerous to the welfare of the country, or in violation to its laws, he could have rejected the sale, just as he could have done in the Bayer case.

THE COURT: Then Congress did give to the President and the Alien Property Custodian the right to exercise some judgment for the protection, in the public interest and welfare of the country.

2775

MR. ANDERSON: The next clause of the act after the one we have had under discussion says that the President may, stating his reasons therefor in the public interest, in writing, authorize the Alien Property Custodian to reject a sale and re-sell. Why? Because the purchaser may not be a satisfactory person, or because the price may not be satisfactory. There are any number of orders in which the President did authorize the rejection of a bid and a re-sale. Therefore, there was abundant protection against monopolistic condition, and the sale individually of these patents could have been adequately protected there, aside from the fact that the purchase individually from the Alien Property Custodian would have meant the absence of that combination, which is a largely essential element in the restraints of trade forbidden by the Sherman Act.

THE COURT: Then as I understand you, Colonel Anderson—I do not want to prolong this discussion, but want to get back to the testimony——

MR. ANDERSON: I am only too glad to answer your Honor's question the best I can.

THE COURT: Yes. But if I understand your answer to my inquiry as to what in your judgment would have been a better plan or a plan that would have prevented the monopoly, your answer is the non-sale of the patents. Am I right?

MR. ANDERSON: That is my primary answer, and my secondary answer is that if the Alien Property Custodian wanted to sell these patents, to have put them up at public auction in the manner that the law prescribed primarily and contemplated, at the proper proceedings to ascertain their value, and then, if they were bid in all by one person or in such a way as in his judgment

was prejudicial to the public interest, he could remedy that condition by having the bid rejected in the manner prescribed by th act, in whole or in part. He had absolute control over the bid, as much as your Honor has in the sale of a piece of real estate by a commissioner, which is nothing but an offer and not a sale until your Honor confirms it.

THE COURT: Then you would have him substitute his judgment in a private sale for the judgment of the President?

MR. ANDERSON: No, sir; if the President wanted a private sale and decided to authorize it, stating adequate reasons in writing, with knowledge of the facts, and conformed otherwise to the terms of the act, then that was a question for him to decide within the limitations of the act; and when he decided it, he must make a private sale and not destroy the property and give it away. He had nothing to do with the sale, he only had the power to authorize the Alien Property Custodian to sell, that is all. The President had no control whatever over the sale, except to do two things; one was to enter an order authorizing a private sale, by the Alien Property Custodian and not by himself, for he had nothing to do with it, and second, if the Alien Property Custodian presented to him facts to show that the bid ought to be rejected, authorize him to reject the bid and sell it again. But the sale is the act of the Alien Property Custodian in every instance; the President has nothing to do with that.

Congress vested in the Alien Property Custodian direct the power of sale, not the President, and not through the President. The President's powers and duties are very limited under that section of the act—very.

If I have answered your Honor's question to the best of my ability, I want to thank you for your patience, for I have probably been longer than necessary. But what plan might have been followed is not for me to say. All I am arguing is that this plan was not the right one and was not a legal plan.

THE COURT: If I could use that as a check in determining whether the present conditions under which the patents were sold was a violation of the act——

MR. ANDERSON: Of course it is a side-light, I recognize that, and that is the reason I tried to answer your Honor as well as I could.

THE COURT: I am prepared to rule on the question.

MR. KRESEL: I have nothing further to say.

THE COURT: You may continue your answer, Mr. Garvan.

MR. KRESEL: Just to remind you, Mr. Garvan, my recollection is that you were testifying—well, I have not any recollection just exactly what you were testifying about.

THE COURT: He was testifying about the information——

A. (Continuing.) Yes, the activities of the German agents here as part of the espionage system of the German Empire. The point I had not got to is that from my information there were many evidences that this combination in Germany into the one cartel which was in progress as shown by the book of the Senate of 1910, was intended to and aimed, after it obtained a monopoly of the dye industry, to use that monopoly to assist each other competing industry of Germany with the manufacturers of the world, by refraining from giving the latest dyes, and so forth, to the carpet manufacturers of this country, they would

be in a position to offer advantages to the manufacturers of Germany.

Q. 100. May I stop you there a minute? You spoke of espionage? Did you have before you at this time any examples of such espionage, and if so, will you now mention them?

A. Yes, we had many. The principal one was the head of the chemical agents in this country.

Q. 101. Who was that?

A. The late Dr. Schweitzer, Dr. Hugo Schweitzer, who was an American citizen, and we found in his papers directions from the German Empire that he become an American citizen for their purposes here. We found that he had his number from the German Secret Service. I have forgotten it—nine hundred and something odd thousand. For the three years from 1914 to 1917 we found many evidences of his intense activity.

Q. 102. For example?

A. For instance, he was the first man to meet Dr. Albert when he came to this country, and he was the last man to bid him good-bye, and Dr. Albert left about two million dollars of the propaganda fund of the German Embassy in Schweitzer's hands to continue the disposition of. Dr. Schweitzer was the head of the German Publication Society for the purpose of putting out the literature of Germany. Dr. Schweitzer, at the request of the German Government, attempted to corner the phenol of this country. Phenol is carbolic acid, and it turns either to the right or left into aspirin or into picric acid, which is the base of the explosives.

Q. 103. Stop there a minute, please. Upon that last transaction, did you have any writing before you?

A. I did.

Q. 104. What was it?

A. I had the praise of Dr. Albert for the great ac-

complishment for the Fatherland which Dr. Schweitzer had accomplished in this country.

Q. 105. Now please look at page 511 of the Finance Committee report, and state whether or no that is an extract from the letter that you speak of?

A. It is.

MR. ANDERSON: Where is the entire letter, do you know?

MR. KRESEL: There again, Colonel, that letter is in the Alien Property Custodian's office, or in the Department of Justice. We do not know. We did not take these records, but they were introduced before this Congressional Committee.

MR. ANDERSON: By whom, Mr. Kresel? By whom were they introduced?

MR. KRESEL: It was introduced by Mr. Garvan when he was being examined, at page 511 of this hearing. Do you find it?

MR. ANDERSON: Yes.

MR. KRESEL: I now offer in evidence this extract from Dr. Albert's letter, at page 511.

MR. ANDERSON: I object to it upon the grounds stated already, and upon the further ground that it is only part of the letter, and the whole letter should be produced or all rejected.

MR. KRESEL: We state, your Honor, that we have not the possession of that letter. It is an official document in the possession of the Government.

MR. ANDERSON: To which I respectfully reply that the record as stated now shows that it was introduced by Mr. Garvan before this committee and must have been in his possession.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 80." (*See Exhibits, Vol. IV, page 2573.*)

MR. KRESEL: I read the extract, as follows. This is from Dr. Albert. (Reads letter.)

Q. 106. Now, Mr. Garvan, please proceed, but very briefly, if you have anything further to say as to the information you have with reference to espionage?

A. Dr. Schweitzer was the head of the group that purchased the Evening Mail as an organ of the German Government, and there were many, many activities.

By MR. ANDERSON:

Q. 107. Do you know that of your own knowledge, Mr. Garvan?

A. Yes, certainly, it is in the evidence in the case of Rumeley—the prosecution of Rumeley by the Department of Justice. All you have to do is look at the record of the trial, the testimony there.

By MR. KRESEL:

Q. 108. That is all right, if you are answering the Colonel's question. Now, will you proceed?

A. There was Dr. Scheele, another chemist.

MR. ANDERSON: I want to make this suggestion. If he is testifying as to the record in another lawsuit, I call for the production of that record.

MR. KRESEL: I thought I would like a ruling from your Honor on this. Our contention is that upon matters of this nature the best evidence rule does not apply. It is only where the question is directed directly to the issue involved in the case.

THE COURT: I ruled on that on the prior objection.

MR. KRESEL: I am sorry. I still understand Colonel Anderson to argue the contrary.

THE COURT: He is stating his objections; but I have ruled on it and made the same ruling here.

Q. 109. Will you proceed, Mr. Garvan, but be brief about it.

A. The activity of the other chemists in connection with the dye interests here. Dr. Scheele, of Bogota, New Jersey, was arrested as the manufacturer of the bombs which were attempted to be attached to our ships in the harbor of New York.

Dr. Strauss, the head of the—the name has escaped me now—under the guise of a chemical company in New Jersey, ran the German-Jewish propaganda, the propaganda among the German-Jewish people of this country.

There were many of those activities that were all rehearsed, or most of them, before the Overman Committee in the Senate of the United States.

Q. 110. What, if anything, did your investigation disclose as to whether or no the Germans had taken out United States patents covering dyes, chemicals and pharmaceuticals?

A. It showed that they had; that they maintained a very extensive organization, not only to patent their own inventions in Germany, but to observe the progress of science anywhere in the world and, if possible, anticipate that discovery of science by the taking out of what we call anticipatory patents.

Q. 111. What did your investigation disclose as to whether or no the Germans worked their United States patents in the United States?

A. They did not.

Mr. Anderson: Now, one moment, I object. If the question is as to what the investigation disclosed, I presume this evidence is intended to be a statement of fact, and if that is the case, the question of whether the Germans worked their patents in the United States cannot be proved by this witness. If it is intended to prove information that he had derived from sources that he has indi-

cated, why, your Honor has already ruled on it and covered my objection. If this is intended to prove what was a fact at that time, then it must be proved by people who know the facts.

MR. KRESEL: It is intended to prove, sir, primarily, what information this witness had before him. It may also be valuable upon the question of proving the fact, because, as I am going to proceed with this witness, I shall show that his information as to whether or no they worked these patents came from official sources, reports made by the Tariff Commission, for instance, to the Government, which is prima facie proof of the facts. But I have got to go step by step. Has the question been answered?

THE COURT: If it is a source of information, the evidence cannot be rejected. Whether you may use it for any other purpose would depend on whether you can show that you are entitled to use it for any other purpose. You may proceed.

MR. KRESEL: Very well; I will undertake that. Has the question been answered?

(Q. 111 and answer thereto repeated as above recorded.)

Q. 112. Did you or did you not convey to Mr. Palmer, as Alien Property Custodian, the results of the investigation that your bureau had been making?

A. I did.

MR. ANDERSON: One moment. I move to strike out that answer until I have had a chance to object.

MR. KRESEL: Yes, I consent to strike it out.

MR. ANDERSON: I object on the ground that if they want to show what they conveyed to Mr. Palmer, he must say what facts he reported and

not the conclusion that he conveyed information that his bureau had collected. That is a pure conclusion, and may cover twenty volumes of stuff. It may cover one volume; it may cover one fact; it may cover a million facts. If he wants to show that, he must show what facts this gentleman reported to Mr. Palmer, and how he reported them.

THE COURT: I think the objection is well taken and the witness should state the facts that he disclosed to Mr. Palmer.

Q. 113. Mr. Garvan, will you please state what, if any, facts you reported to Mr. Palmer with reference to the information that you had obtained in these investigations? Be as brief as is possible under the circumstances.

A. I reported to Mr. Palmer probably twice a week; at least once a week. I would go to Washington and report what I had learned in the meantime.

I reported to him that the Germans had a monopoly, before the war, of the German industry—of the dye industry; that they had taken out this great number of patents and had not worked them; that they used these patents as a club, not only to prevent the development of American manufacture, but to make our consumers buy goods from them alone and to crush out the competition of Switzerland or of any possible competition by any other country that might attempt to make them.

MR. ANDERSON: I move to strike out the evidence on the ground that it is a conclusion of the witness and not facts. Whether they used the patents in a certain way is not competent testimony, and was objected to very earnestly when I was undertaking to prove some similar facts, and probably soundly. As to the Germans' undertaking to create a monopoly is a conclusion. As to

whether they were excluded from Switzerland is a conclusion. If he reported any specific fact to Mr. Palmer, then it would come within the question; but the facts and not his conclusion from the facts is the thing that must have been reported.

THE COURT: Is there a dispute between counsel as to the situation with respect to the German dye and chemical industry in America, in February, 1919, and April, 1919, and for five years preceding? It seems to me that this case is getting long enough without differing on facts as to which there can be no dispute. It ought to be well known to the Government of the United States and to this defendant precisely what that German chemical and dye situation was in this country ending with the date of the last assignment of these patents, whenever that was. If that is in dispute, let us have it on both sides. If there is no dispute, why add thousands of pages to this record to determine it. Cannot counsel agree upon it?

MR. KRESEL: I am very glad that your Honor has made the suggestion. I should not think that there would be any dispute. The Tariff Commission reports and the Norton report which I put in this morning, which are official reports, state the situation exactly.

THE COURT: I do not know what the situation was, and I am not suggesting that you agree; but if there is no reason for disagreeing, then why take up the time of all of us for a week and add thousands of pages of testimony for the Appellate Courts to review?

MR. KRESEL: I think your Honor is entirely correct. I thought that Colonel Anderson would not object to my simply asking the question whether he passed the information on, because that

would have avoided this long answer. But if Colonel Anderson insists, then I have got to go on.

MR. ANDERSON: If your Honor please, if this evidence has any materiality whatever, which I cannot see, but which I recognize others may see, then it is of sufficient importance to investigate it. If it has no materiality, if we are just going to deal with conclusions and have argument from gentlemen on the witness stand, then it is a waste of time. Therefore, I submit that we must either take the evidence legally or not take it at all. The case ought not to proceed that way. I frankly say, in answer to your Honor's question as to what was known by the Government of the United States, I cannot say, because it is too large an institution.

So far as I am concerned, I have regarded all this as utterly immaterial in this case, and have not wasted my time studying it. I do not know a thing about it. I assume the Germans did all they could to protect their interests and develop their position, just as the English and the Swiss and the Americans did; and that is all I know about it.

THE COURT: It seems to me, Colonel Anderson, that the people making the sale of these patents had to do it either with intelligence or mechanically, if they were sold, and the Trading with the Enemy Act authorized their sale. If this was a purely mechanical proposition and the Alien Property Custodian in making the sale, or the President in authorizing a private sale, did not intend to use any judgment or wisdom or consider the welfare of America, not only the immediate welfare, but the future and military welfare and

possible independence of America, that is another thing.

If they were entitled to consider (and I am not saying that they were. I understand that your contention is that no such power was authorized by Congress when it passed the Trading with the Enemy Act or the amendments thereto), inasmuch as we have admitted all evidence under the general rule, it seems to me this evidence will have to go in. I do not mean the conclusion of what he stated to Mr. Palmer, because he will have to state the facts; but I cannot see how I can now say that the matters which were necessary to be considered for the preservation or protection of America (not any specific American industry, possibly, but the American Government) with respect to the German chemical and dye patents and industry, might not be material.

I do not want to get into a discussion of all those questions. I will make a specific ruling that this witness, in stating what he told Mr. Palmer, his superior, will have to make a statement of fact and not a conclusion of fact.

Q. 114. Mr. Garvan, you have heard the Court's ruling. Will you now state what facts you told Mr. Palmer with reference to the investigation made by you and your department of the German relation to the chemical industry of the United States? I will put it that way. And please do it as briefly as possible.

A. I told him that the German Big Six had a monopoly of the organic chemical industry of the world.

Mr. Anderson: I object and move to strike out the answer.

MR. KRESEL: Your Honor, I do not think that is a conclusion.

THE COURT: That is not in the ruling. I am not concerned here as to whether he detailed his own conclusions to Mr. Palmer; but the thing that this witness has now been asked to state, and which I have ruled that he can state, is what he told Mr. Palmer. If those were conclusions, then he may show in summing up that they are unimportant; but it is the same ruling that I made with respect to Mr. Palmer and what he told the President.

Q. 115. Will you proceed?

A. I told him that through that monopoly the progress in German business had been made which placed her in the economic position that she had in the world before the war; that her economic structure was based on the strengthening and developing of all her industries by that organic chemical industry.

I told him that her bringing the war was based upon that organic chemical industry; that it was not until the fall of 1913, when her dye plants had perfected their Haber process plants and made them independent of the Chilean nitrates, so that England's blockade would not be feared, that she began to seriously prepare for the final steps before the declaration of war; that she could not have carried on the war for but a few months had it not been for the developments of the German dye factories; that the poison gas of the war had been prepared and worked out in the German dye factories; that the greatest proportion of her ammunitions during the war, with which she fought the war, had been made along the Rhine and the Ruhr in the organic chemical industries of Germany; that it was the power with which she was waging the war; and that the next war would begin

where this war left off, and would be to an even greater extent a chemical war than the past war had been.

I told him that we had for forty years neglected the organic chemical industry in this country, both in our schools and in our colleges, and that public opinion had no realization of the great and overwhelming relation of this question to our life.

I told him of the history of salvarsan and what the suffering had been in this country because of our dependence upon Germany for that drug, and the same as to luminon, which was the only known alleviative for epilepsy that we had. I told him that our doctors were insisting that we be freed from the domination of another country; that I had interviewed many of them in the Government service, and the men who had had to do with our troops, and so forth, and so on, and they had described to me conditions which they insisted should never exist again. I talked to him again and again.

MR. ANDERSON: Will you state about what time?

MR. KRESEL: I am coming to that.

MR. ANDERSON: Before you ask the next question, in order to get the record absolutely straight, I move to strike out each statement in the foregoing answer and each sentence thereof as pure hearsay and being otherwise incompetent, for the reasons which have been stated already in the objections to the question and which will not be repeated. I understand your Honor's ruling. I merely want to note an exception.

THE COURT: Motion denied.

Q. 116. Will you state, Mr. Garvan, please, the earliest date that you can recall, when you discussed

with Mr. Palmer these German patents covering the dye and pharmaceutical industry?

A. My recollection would be that it was about January, 1918. In the investigation of the Bayer Company we found that all their patents were not held by the Bayer Company, but that they were in another separate company, the Synthetic Patents Company; and that was our first introduction, as I remember it, to the general discussion of the patents held by the Germans in the organic chemical industry particularly and the dye industry.

Q. 117. Do you remember the date of the sale of the Bayer plant?

A. Yes, sir.

Q. 118. Do you remember what date it was?

A. Yes, sir; December 12, 1918.

Q. 119. What happened that day with reference to that sale?

A. On that afternoon I was in New York in my office at Forty-second street; that is, in the A. P. C. office at Forty-second street. The name of the purchaser was telephoned to me from Rensselaer, where the sale took place at the plant of the Bayer Company. I took out the corporation directory to look up who the Sterling Products Company were, as they had never disclosed themselves as a possible bidder before the sale. We knew nothing of them.

Q. 120. Was the Sterling Products Company the successful bidder?

A. The successful bidder. I looked them up and found that the Board of Directors were all German names.

Q. 121. You need not mention the names unless counsel insists.

A. As a matter of fact, in justice to them, I should say that they were the finest type of Americans down

on the border line of West Virginia and Ohio for over a hundred years. But their names were German. They were unknown to me. That started a discussion between Mr. Choate and myself and others at the possibility of having sold that chemical plant to people who might turn it back to the Germans or people who might then go on and buy the properties of the other five agencies who had no real estate, no assets at all except some Liberty bonds, which would not be sold, and furniture and so forth of sales agents.

Q. 122. You spoke of agencies. What agencies are you now referring to?

A. The Kalle, the Badische, the Cassella and the Berlin, the Big Six.

Q. 123. The United States agencies?

A. Their United States agencies here. That was the inception of the idea of The Chemical Foundation that afternoon, the shock that it gave us when we saw that we had sold that company to a bunch of stockholders whose directors all had German names. It was an alarm which was unjustified, but it started us to look into the general situation.

Q. 124. Well, did you discuss the matter with Mr. Palmer?

A. I did, immediately. I went to Washington either the same or the next day.

Q. 125. Please state briefly what discussion there was between yourself and Mr. Palmer with reference to the Bayer sale and the relation of that to the outstanding German-owned United States patents to the organic chemical industry?

MR. ANDERSON: Please have him state the time, place, and persons present.

Q. 125 (continuing). Yes, give the time, the place, and the persons who were present?

A. My recollection is that it was within forty-

eight hours after the Bayer sale, on December 13th, 14th or 15th, possibly, after the sale.

Q. 126. 1918?

A. 1918.

By The Court:

Q. 127. Where, and who was present?

A. In Washington, and, as far as I recall, there was no one present but ourselves.

By Mr. Kresel:

Q. 128. Please give us the conversation?

A. I told him of my experience of the afternoon and the line of thought which it had developed in me. I told him of the fact that the Badische agency had changed hands, that is, that they had formed a New York corporation to take over the office furniture; that they had liquidated the old Badische Company, so that when we came to sell the Badische Company there would be nothing there to sell except the cash in the treasury, Liberty bonds, and the patents.

I told him that the same thing was true as to the Berlin; to a lesser extent, I think, of the Kalle. I think they had a few goods on hand. But none of them had any plants. I said that heretofore we had looked up the patent situation with the idea that it would be cleaned up by selling the Big Six agencies over here, but it was perfectly apparent that the situation had changed now and that the purchaser of the Bayer Company, having paid $5,000,000 for that property, which was a great real estate property, a great growing factory with its great product aspirin, was in a position where, for a very moderate expenditure of money, he could come along and buy the patents which were put up on the five or six German agencies that were coming on for sale, which he would have, together with the 1200 patents which had gone with the Bayer Company, without any assurance on our part that there

would ever be any development, that they would not be transferred to the Germans after the war, and that possibly all our work, as far as the creation of a chemical industry and assurance of it in this country was concerned, might be in danger. But there certainly would be that danger if we ran the risk of having the one purchaser of the Bayer Company, where there were real assets, in a position to come right along at our sales and buy up the patents as they were sold, with the remaining agencies and become the sole owner of Germany's hold on America with no power of the Government to control the use of it by that purchase.

He said to me that he had been thinking the same thing or along similar lines. He told me to go and see Mr. Choate, who was our expert on those things, and told me to consult Hoguet, who was a patent man; that neither Choate nor I knew anything about patent law; and to go and see what we could do to formulate some plan; that we must avoid a monopoly.

Q. 129. Is that what he said?

A. Yes, that we must avoid the monopoly; that the President had insisted that in the sale of this property we should be careful to not tend toward intensifying even any apparent monopoly that there existed in the country or to create any monopoly. That was the policy of the office.

He said that we must make sure that any big company in the dye business did not get a chance to crush out the growth of a general and broad industry by getting possession of the patents which might control the development.

He told us to go off and work out something and come back and report.

Q. 130. Did you then consult with others about the situation?

A. I did.

Q. 131. With whom did you consult?

A. I consulted with Mr. Choate. I consulted with Mr. Hoguet. I sent for Dr. Herty who was at that time the editor of the Mechanical & Chemical Engineering Magazine. I consulted with many in the industry. I consulted with Dr. Matheson who had been the Cassella agent for some thirty odd years but at that time had become an American manufacturer and was, I think, one of the largest if not the principal owner in the National Aniline. I consulted with Mr. Poucher who was the representative of the duPont Company. I consulted with Mr. Merz of Heller & Merz. I consulted with Mr. Jeffcott of the Calco Chemical Company. I consulted with Mr. Wigglesworth of the General Chemical Company. I consulted with every one—I think Dr. Bogart of Columbia—I am not sure as to whether I did on this specific point—but every one I could think of that could give us any light on the subject.

Q. 132. Please state whether, after these conferences with the representatives whom you have mentioned, you had further talks with Mr. Palmer upon this subject?

A. I did. I went back to him and told him that we talked over some kind of a trustee corporation. First we discussed the Government buying the patents, but that did not seem to us to promise any progress, that is, to make these dyes under these patents; that they only represented some five per cent of the dye production and to make them meant millions of dollars of research and large investments of capital; and that the industry said that they would absolutely refuse to invest their millions in research or development with the patents in a condition where, if there came a wave of sympathy after the war, they could be given back to Germany, and they be left with their in-

vestment and their plant and the control of them back in German hands.

I told him that the industry said that they already had licenses from the Federal Trade Commission; that both of the biggest companies had taken out almost a blanket license for these vat dyes, which are the only ones that are of moment in the patents, and that they were loathe to go ahead with any scheme as they felt themselves protected by that license. Both the duPonts and the National Aniline had licenses from the Federal Trade Commission.

I told Mr. Palmer also that Mr. Matheson told me that he had been a bidder for the Bayer Company and that he had his experts value the patents.

MR. ANDERSON: I object to this, if your Honor please. If they are going to try to prove this as a fact, I want to object to it because it is going into valuation of property and I do not think hearsay evidence is admissible on that subject.

MR. KRESEL: Why not, Colonel?

MR. ANDERSON: Of course, I am taking the position that none of this evidence is admissible on that ground, that is, hearsay. But when you go into the question of value, which is a question on which there apparently seems to be some difference, it does seem that if Mr. Matheson had any knowledge of value, he could be called. Before determining the value of the Bayer patents, you would have to have some idea of what they were; and what Mr. Matheson may have told Mr. Garvan and Mr. Matheson's relations with the property are not known, and what Mr. Garvan told Mr. Palmer is certainly no evidence of value.

MR. KRESEL: But, your Honor, when you come to consider the question of value, we have a right to say what information Mr. Garvan and Mr. Palmer had upon that; and if Mr. Matheson

went to Mr. Palmer and said, "Mr. Palmer, these patents are worth a million dollars", that is material to the issues here. We do not have to call Mr. Palmer or Mr. Matheson. And, if Mr. Matheson said, "They are not worth a cent," we have a right to show that.

If you want to call Mr. Matheson to show that he did not say that, you are at liberty to do it. All we are showing is what information we had. We are entitled to do that.

MR. ANDERSON: I have noted my objection.

THE COURT: The same ruling as I made in the case of Mr. Palmer that the information which he gave to the President was admissible. I will likewise admit any information that was given to Mr. Palmer with respect to the patents.

This brings us to the recess hour. We will take a recess until one o'clock standard time.

(Recess until one o'clock Standard time.)

AFTER RECESS.

Q. 133. At the time we took the recess, Mr. Garvan, you were telling of a conference with Mr. Palmer, and you had reached the point where you were telling him about Mr. Matheson and what he had said with reference to the value of the patents. Now, have I given you sufficient connection with the other?

A. Yes.

Q. 134. Will you proceed now?

A. Mr. Matheson told me about the license that they had taken out from the Federal Trade Commission, and then I talked with him about the Cassella patents, which he knew about.

THE COURT: Just a minute. The witness is

now saying he talked with Mr. Matheson. Your inquiry was as to what he told Mr. Palmer?

MR. KRESEL: Exactly.

A. (Continued.) I told Mr. Palmer as to what Mr. Matheson had said. He said that he had been a bidder, or his concern had been a bidder for the Bayer Company, where 1200 patents had been sold with the plant. He had had his chemical experts value those patents before he bid, and they had valued those patents at $10,000. He did not see why they should pay a large sum for the remaining patents; that there was nobody who knew how to work them; that they would have to spend millions of dollars in research to rediscover how to work them, and the most they would give them would be freedom to develop without interference after the war by the Germans, but if I could induce all the industry to go into the thing, why, they would go along as a patriotic duty and put up whatever was their share, whatever they all decided between them was their share of the underwriting.

Q. 135. Have you stated substantially all your conversation with Mr. Palmer on this occasion?

A. I told him also that I had talked with all the different representatives of the industry.

MR. ANDERSON: Just state when that appeared, will you?

A. (Continuing.) I should think that that probably was somewhere along after the middle of January.

Q. 136. What year?

A. Of 1919. I told him that I thought the industry would go along with his ideas, and he then stated to me the conditions that we would have to exact from any corporation that was to be formed to take them over.

Q. 137. What did he say about that?

A. He said that there would have to be non-exclu-

sive licenses open to everybody, either at present in the chemical business or who might go into it in the future; that it must be absolutely iron-clad against any possibility of combination or monopoly on anybody's part.

He said that a free license would have to be given to the Government, both releasing them for past infringement, and to allow them to either manufacture themselves in case of war, or for use in peace, or have manufactured for their own use.

He stated that it must be a non-profit-making institution; it must be so organized that no individual got any profit out of it, except what they earned by developing the industry and selling the products which the patent would allow them to sell.

He said the stock would have to be trusteed and would have to be trusteed in the name of the sales committee who had been with him throughout the war and who fully understood the necessity of guarding against the return of these properties to the Germans.

Q. 138. After this talk, did you again have conferences with the representatives of the industry?

A. I did.

Q. 139. Can you place the date? How soon after this talk with Mr. Palmer?

A. That was after they had been down and talked to Mr. Palmer. It was some time in February, the early part.

Mr. Anderson: Now that the subject has been changed may I interrupt just a moment. I know your Honor's ruling. I merely want to move to strike out the evidence of this witness as to any statements by Mr. Matheson as to value, and also to strike out the alleged conversation between himself and Mr. Palmer, and Mr. Palmer's conditions.

As to the first part of the motion, it is, I

think, covered by my objections already made. As to the second part, these negotiations, whatever they are, have been merged into agreements which are in writing and which speak for themselves. This motion is based upon these grounds, as well as the general and specific objections heretofore taken. I understand the situation. I merely want to make the record clear.

THE COURT: I understand that the allegations might conceivably make a conspiracy. I do not say that they do, or will, but it is possible to conceive that they might. For that reason the objection is overruled and the evidence will be received.

MR. ANDERSON: It was not so intended, sir. I will say that.

THE COURT: I mean, Colonel Anderson, the reasons leading up to this transaction; not your reasons.

MR. ANDERSON: Oh, I misunderstood your Honor.

Q. 140. Will you state now what conference you had with the representatives of the industry early in 1919, as you say?

A. At one of the next meetings——

MR. ANDERSON: Mr. Kresel, when you say "representatives of the industry", will you have him say who was present, when and where, and who spoke?

Q. 140. (Continuing.) Please state as near as you can recall who was present and where the conference took place and when?

A. It was sometime along the middle of February. We had a very large meeting at my office.

Q. 141. Where?

A. At 42nd Street, New York.

Q. 142. Please state as near as you can recall who was present?

A. It would be impossible for me to state them all.

Q. 143. State as many as you recall?

A. As to who was present, I have only my recollection. I have a recollection of Mr. Poucher and Judge Laffey, two or three representatives of the National Aniline—which ones they were I would not be able to state because I saw a great many of each company. I think Mr. Jeffcott of the Calco Chemical Company was there, some representatives of the Newport Chemical Company, some representatives I think of Sherwin-Williams; I think Mr. Merz; I think Mr. Wigglesworth; I think Mr. Henry Howard, secretary of the General Chemical Company. There was quite a large group of them at that meeting. Mr. Choate was there, I think. I am positive Mr. Choate was and I think Mr. Hoguet was. I am not positive.

Q. 144. You say that this meeting took place in your office on 42nd Street?

A. Yes; the Alien Property Custodian's New York office.

Q. 145. Will you now state briefly but substantially what took place?

A. I told them the terms that Mr. Palmer had laid down.

Q. 146. Please state just what you said to them?

A. I told them that there must be non-exclusive licenses and that the stock must be trusteed for the life of the longest patent in the hands of the Sales Committee; that it must be a non-profit making proposition; that they must give the Government a free license. In the discussion they proposed that the license fee be so adjusted that when the preferred and common stock was paid back there be no license fee. I said, "No," that Mr. Palmer exacted that they al-

ways pay a license fee but that when the stock was paid back, the balance would be devoted to the general development of chemical education and the general development of chemistry in the war. They had one or two other proposals. What they were I am not sure. And we discussed the price.

Q. 147. What was said about that?

A. They discussed the elements that went in to make it uncertain what their value was in view of the conditions that were being imposed.

Q. 148. What was said about that and by whom if you can state?

A. They said that of course any one of them individually would not buy patents under any such condition as that; but if the Government made this proposal to them and urged them to do it, as a spirit of the war was still on, they would carry on for as much as their proportion called for, as they all agreed each should do; but that individually, of course, with that form of a conveyance, it offered no business attraction to any one of them individually, and they agreed that they would give $250,000 and supply $250,000 of working capital.

Q. 149. Could you state who it was that made the statements on behalf of the conferees?

A. No, I could not. It was a general discussion by everybody.

Q. 150. Do you remember any particular persons making any statement?

A. No.

MR. ANDERSON: Has he fixed the date?

MR. KRESEL: Yes, about the middle of February, 1919, as I recall it.

THE WITNESS: About the middle of February.

Q. 151. What did you say or what did Mr. Choate say about the price, or anything else?

A. Well, Mr. Choate after the discussion went on agreed that that would be a fair and reasonable price.

Q. 152. Did he say that?

A. He did.

Q. 153. What did you say?

A. Well, I agreed that it would, too. It was apparently the most we could get, too.

Q. 154. Then did you after that conference have another talk with Mr. Palmer?

A. I did.

Q. 155. What did you say to him then and how long after this conference about the middle of February?

A. Within a day or two.

Q. 156. Where was it that you saw Mr. Palmer on that occasion?

A. In Washington.

Q. 157. Please state what you said to him about this subject?

A. I told him we had had a conference, there had been many of the manufacturers there, both from the Dyes Institute and from the manufacturing chemists, which were the chemical concerns outside, and that they had accepted his terms, his conditions, and that they had made the proposal of the price of $250,000, and Mr. Choate, Mr. Hoguet and myself thought it was a fair price, and he said, all right, he would accept it.

Q. 158. After that conference did you have another talk with the representatives of the industry?

A. Yes, I reported back to them.

Q. 159. What did you say to them?

A. I told them that Mr. Palmer had accepted their offer.

Q. 160. Can you fix about the date when you conveyed that information?

A. No, it was within a few days of that time.

Q. 161. Do you remember when the charter of The Chemical Foundation was filed?

A. Filed, I think, February 19th, if I am not mistaken.

Q. 162. What year?

A. 1919.

Q. 163. You spoke of these gentlemen who were present at the conference saying they would underwrite the amount of money necessary. Was there an underwriting necessary?

A. Mr. Palmer stated to me that he wanted the stock as widely distributed as possible, and in our conversation we decided that nobody could hold more than two shares of common stock, and our aim was that they would hold eight shares of preferred stock, that is $1,000, and that it would be divided into 500 concerns holding it. So that in my talks with them they agreed that they would attempt to distribute the stock as widely as possible in conformity to that expressed idea of Mr. Palmer, but that they would get together the industry and would underwrite the $500,000.

Q. 164. Do you know what steps were taken to distribute the stock as widely as possible?

A. Yes.

Q. 165. What was done?

A. We circularized the 3,000 firms throughout the United States in whom we thought it would excite any interest.

Q. 166. Will you stop there a minute. Have you a list of the firms which were asked to become stockholders?

A. I have.

Mr. Kresel: Colonel, I have this list here. I do not want to burden the record with a list of 3,000 names and addresses, but it is available to you if you desire to examine it. I will mark it for

identification, if you like, or I will put it in the record, if you like, just as you say.

MR. ANDERSON: I would like to know when this circularization took place.

MR. KRESEL: Yes, I will inquire.

Q. 167. Mr. Garvan, will you state how soon after the organization of The Chemical Foundation the industry was circularized to endeavor to distribute the stock as widely as possible?

A. From recollection I would say early in March after we got started. But the circular itself bears the date. I could find out from our own records.

Q. 168. Look at this (handing witness paper). Is it a copy of the circular that went to each?

A. Yes, that is right. Then it must have been much later. According to that, it is July.

MR. KRESEL: This I will offer in evidence—a copy of the circular.

THE WITNESS: There was a prospectus went with that.

Q. 169. Yes, but that is already in evidence, however.

A. Yes.

MR. KRESEL: I would like to have this marked.

Received in evidence and marked "Defendant's Exhibit No. 81." (*See Exhibits, Vol. IV, page 2575.*)

MR. KRESEL: Colonel Anderson agrees with me that it is not necessary to put this long list of names and addresses into the record, but I think I shall have it marked for identification.

(Marked for identification "Defendant's Exhibit H.")

MR. ANDERSON: I assume it is not necessary for me to state that all this preliminary negotiation which the witness has described is not only

subject to the general objection, but the specific objection which I stated heretofore.

THE COURT: Or subject to all applicable objections, general and specific, heretofore made.

Q. 170. Mr. Garvan, have you had prepared a list of the stockholders of The Chemical Foundation showing the businesses that they are in?

A. I have.

Q. 171. As of what date is this?

A. Down to the present date. I do not think there has been any change, hardly, since the beginning.

Q. 172. Will you produce that?

A. I do. (Handing counsel.)

MR. KRESEL: I will offer this in evidence.

MR. ANDERSON: It does not state the number of shares preferred and common.

MR. KRESEL: You have that in your list which is already in evidence. Isn't that right, Mr. Galloway?

MR. GALLOWAY: Yes, I have that.

MR. KRESEL: May this be marked in evidence?

Received in evidence and marked "Defendant's Exhibit No. 82." (*See Exhibits, Vol. IV, page 2576.*)

Q. 173. Mr. Garvan, do you know whether or not the stockholders of The Chemical Foundation are members of the Dyes Institute?

A. Some are and some are not.

MR. ANDERSON: The stockholders of what date, Mr. Kresel, please? Would you make it a little more specific?

MR. KRESEL: I will try to, Colonel.

Q. 174. Mr. Garvan, this Exhibit 82, as I understand your testimony, is a list of the present stockholders?

A. Yes.

Q. 175. Has there been any material change in the

stockholders or the amount they hold since the organization of the company down to date?

MR. ANDERSON: I must object to the form. If there is any change it can be pointed out.

Q. 176. To your knowledge, has there been any change in the stock holdings of the various stockholders?

A. I think there was a change right after we were organized, before the distribution took place, but since July, 1919, I would say there was no material change. I will verify it and give you every change by tomorrow morning, after looking at the books. But as a result of this circularization we spread our holdings among 158 and diminished the larger holdings by so much as we were able to sell to the others, but nobody ever had any more than two shares of stock, common stock, there never was any deviation from that rule.

Q. 177. Do you know how many of the concerns underwrote that?

A. I do not remember, no.

Q. 178. The exhibit is in and that will show?

A. If it is material, I can get it for you by tomorrow morning.

Q. 179. It is in. What was the total amount of capital that was actually paid in by the stockholders?

A. $428,900.

Q. 180. In other words, no more than that has ever been paid in?

A. No, sir.

Q. 181. Can you state whether all of the preferred stock has been issued or all of the common stock?

A. All of the preferred, but only as much of the common as double the number of stockholders.

Q. 182. In other words, there has been $400,000 of preferred stock issued?

A. $400,000 preferred.

Q. 183. And only $28,900 of common?

A. Yes, among 156 stockholders. So some must have only one share of common.

Q. 184. In whose name is the common stock on record in your company?

MR. KRESEL: We will produce the books if you like, Colonel; but I do not believe there is any dispute about that.

A. The names of the five trustees.

MR. ANDERSON: Name them, please.

Q. 185. Will you give the names, please?

A. At the present time, Cleveland H. Dodge, Judge Ingraham——

Q. 186. George L. Ingraham?

A. George L. Ingraham; Benjamin Griswold, of Baltimore; Otto H. Bannard, of New York City; and Bradley W. Palmer, of Boston, Mass., of Story, Palmer, Thorndike & Dodge.

Q. 187. You state "at present." Had there been any change in the voting trustees?

A. Mr. Ralph Stone, of the Detroit Trust Company, was originally a trustee, but he could not make the trip from Detroit to New York, and so asked to be relieved.

Q. 188. And Mr. Bradley W. Palmer took his place?

A. Yes.

MR. ANDERSON: Could you state the date of the change?

Q. 189. Can you give us that, Mr. Garvan?

A. I cannot. I will in the morning.

MR. ANDERSON: If you have got the record here, let him give it to us now.

A. (Continued.) About a year ago; a year and a half ago. I would say it was a year ago last January. That would be my recollection.

Q. 190. Mr. Garvan, there has been read into the record here an extract from the minutes of the Ad-

visory Sales Committee of the Alien Property Custodian, from a meeting held by that committee on the 14th of February, 1919, which is to the effect (I am not quoting the exact words) that you appeared before the committee and explained the plan for the disposition of the German patents, and that the plan was approved in principle. I think that is the substance of the statement in the minutes. Do you recall appearing before the committee?

A. I do.

Q. 191. Do you recall who was present there? I mean, what members of the committee?

A. Mr. Ingraham—Judge Ingraham, Mr. Bannard, Mr. Dodge, and Mr. Griswold, as I recollect it. I do not think Mr. Stone came on for that meeting.

MR. KRESEL: Yes, that is right, according to the minutes, Colonel.

Q. 192. And you were present?

A. Yes.

Q. 193. Who else? Do you remember anybody else being present?

A. The first part of the hearing, whether he stayed through or not, Mr. Palmer himself was present. He had another case on there on the calendar that day.

MR. KRESEL: I desire to read in, if your Honor please, from these minutes from which the Government has already put in a portion, the following:

"Minutes of meeting of Advisory Committee on Sales, held at the New York office of the Alien Property Custodian, 110 West 42nd Street, New York City, on Friday, February 14, 1919, at ten o'clock A. M.

"Present: Messrs. Otto T. Bannard, George L. Ingraham, Cleveland H. Dodge, Benjamin H. Griswold, Jr.; Ralph Stone, excused.

"By invitation: Honorable A. Mitchel Pal-

mer, Alien Property Custodian; Messrs. F. P. Garvan, Director Bureau of Investigations; Ralph J. Baker, Assistant General Counsel; Joseph F. Guffy, Director Bureau of Sales; F. X. Anglin, Assistant Director Bureau of Sales; H. D. Green, Assistant Chief Division of Insular Possessions; George P. Wagner, Secretary to the Committee."

Q. 194. Now please state, Mr. Garvan, what, if any, statement you made to the committee at this meeting with reference to the disposition of the German-owned patents?

A. I made a general statement of the whole situation.

Q. 195. State as briefly as you can——

A. I would have to go right over the same ground again.

Mr. Kresel: Perhaps there will be no objection to my asking specific questions about it.

Q. 196. Did you tell the committee of your conferences with Mr. Palmer and with the representatives of the industry with a view of selling these patents?

A. I did.

Q. 197. Did you tell the committee what plan Mr. Palmer had proposed and which you and Mr. Choate and Mr. Hoguet had perfected?

A. I did.

Q. 198. What did you say to the committee upon that particular subject? I mean, what the plan was?

A. I told them that Mr. Palmer wanted to trustee these patents so that there would be no danger of their ever going back to Germany; that there would be no danger of the substitution of an American monopoly for the German monopoly; that everybody would get a fair deal, little fellows and big fellows alike; that the license fees would be equal on any product to one and all, whether they had put up money or not; and that we wanted them to become trustees to insure those

terms of Mr. Palmer being carried out beyond peradventure of doubt. I knew that they had had two years of war work and most of them were old men, but asked them to accept that additional burden of becoming trustees of that institution.

Q. 199. By the way, may I stop you there to inquire whether any of these gentlemen ever received a penny for their services?

A. Certainly not.

Q. 200. Either from The Chemical Foundation for acting in this capacity or from the Government acting on the Advisory Sales Committee?

A. Absolutely no, either by way of expense account or any possible way under the sun. They were men of very mature years whose lives had already been rounded out, and had no interest whatsoever in anything connected with these German properties. Judge Ingraham was the leader of our Bar for thirty years and the arbiter of the ethics of New York lawyers and judges for the last twenty years.

Q. 201. While I am on this point, I omitted to ask you on Friday whether in your capacity as director of the Bureau of Investigation of the Alien Property Custodian you received any compensation?

A. A dollar a year.

Q. 202. I am sorry to have interrupted you. Will you proceed now to state more fully what you told the Advisory Sales Committee as to the plan and whether you told them about the price and whether you told them the condition?

A. Of course, it is impossible for me to say with what detail I went into the story at that time.

Q. 203. I understand.

A. I know at that time I told them that I was to be one of the directors; that I had consented to go that far; and that was in urging upon them to take up those

additional burdens. I told them of the conditions that necessitated it. Of course, they had sat there for two years and heard the Bayer case and all these other cases and it was not necessary to tell them a whole lot.

Q. 204. What did you tell them about the conditions that Mr. Palmer insisted upon that would surround the sale?

A. I thought I told you that.

Q. 205. You did not, fully.

A. I told them we would have to give the Government a free license; that we would have to give everybody else a license; that it could not be a money-making proposition for anybody; that six per cent. on their money was the most that anybody could get who put money into it and that its future depended entirely upon the progress which American industry might make, upon the amount of money that they were willing to put into their plants and into their research to develop it. I undoubtedly told them about salvarsan. I did to most everybody. I told the story of salvarsan to them. What other details I went into I do not know at this time.

I do remember that they asked at that time that Judge Ingraham, who was the only lawyer among them, take charge of looking after the trust agreement under which they were to serve and see to it that it lived up to the desires of Mr. Palmer and that it was just to the Government and to all concerned.

Q. 206. You mean the voting trust agreement?

A. The voting trust agreement.

Q. 207. And do you know whether Judge Ingraham did take or examine into (I will put it that way) the form of the voting trust agreement that was finally adopted?

A. Judge Ingraham in connection with Gray, of Delaware, as I understand it. I know I had nothing to do with it.

Q. 208. Who were the directors of The Chemical Foundation when it was first organized?

A. Three young men in the Delaware Trust Company. I don't remember their names.

Q. 209. And after they had resigned, who succeeded them?

A. Myself, Mr. Corbett and Mr. McKay, Colonel Douglas I. McKay.

Q. 210. Who was Colonel McKay?

A. Douglas I. McKay was a member of the general staff of the United States Army during the war and had retired and returned. He was a civil engineer, as I understand it with J. G. White & Company. He had been a man of means and a man of considerable position.

Q. 211. Has there been any change in the directorate?

A. Mr. McKay served without pay during the entire time he was there. Mr. Corbett was the Secretary and Treasurer. He at that time was Vice President of the Central Trust Company and for about a year and a half, up to the time that the work became so much that he had to resign his position from the Central Trust Company he received no pay. And, of course, I received no pay.

Q. 212. Has there been any change in the Board of Directors?

A. Yes, sir.

Q. 213. What change?

A. Mr. McKay resigned and we elected Mr. Polk, but then thought better of it; thought that he would not be willing to serve; and we then elected a young lawyer who worked for us who was there on the job all the time, a young man named Haaren. Otherwise there has been no change. He was made secretary, Mr. Corbett remaining as treasurer.

When Mr. Corbett resigned from the Central

Trust Company, he served at a salary, I think, of either $10,000 or $15,000 a year for a certain time and since then, for a year and a half, I think, has again given his services for nothing.

MR. KRESEL: If you would like the exact dates of that, Colonel, I will furnish them.

Q. 214. I want to make sure that I have all the changes in the officers. There has been no change of the office of president?

A. No, sir.

Q. 215. You have been president right along?

A. Yes, sir.

Q. 216. Mr. Corbett has been Treasurer right along, is that right?

A. Yes. I missed one change there. We elected Mr. Miller a director at one time.

Q. 217. You mean Mr. Thomas W. Miller?

A. Yes, I think he succeeded Mr. McKay. Yes, he succeeded Mr. McKay.

Q. 218. And did he serve?

A. He did not.

Q. 219. Among the officers, Mr. Corbett was secretary and treasurer and then resigned as secretary and was succeeded by Mr. Terry, did you say.

A. Haaren.

Q. 220. And are those the officers now?

A. Yes.

Q. 221. You president, Mr. Corbett treasurer and Mr. Haaren secretary?

A. Yes.

Q. 222. Is there a vice-president?

A. I do not know. I wouldn't want to swear to that unless I looked it up. Mr. Corbett may be. I do not know.

Q. 223. To your knowledge, has any of the directors of this company, either past or present, had any interest in any dye concern?

A. No, sir.

Q. 224. Or pharmaceutical concern?

A. No, sir.

Q. 225. Did any director, either past or present, have any stock in The Chemical Foundation?

A. No, sir.

Q. 226. I ask you the same question with regard to the officers of the corporation. Has any of them, to your knowledge, been interested financially or otherwise in any dye concern or pharmaceutical concern or chemical concern, or have any stock in The Chemical Foundation?

A. No.

MR. ANDERSON: So far as the dye concerns are concerned, I would not object. But so far as stock ownership in The Chemical Foundation is concerned, the records or minutes are here and that is a conclusion which we do not admit. Therefore, I object to the witness testifying to his conclusions as to stock ownership in The Chemical Foundation. I do not regard the question of ownership in dye concerns as material and, therefore, I will not call for any formal evidence on that subject. But, as to The Chemical Foundation, I think the best evidence are the records of the company of the stock ownership and the Court may decide in the light of those records what is the relation of the officers to that company. Therefore, I move to strike out his testimony with reference to The Chemical Foundation.

MR. KRESEL: Your Honor may recall the same question came up on Friday afternoon when I asked Mr. Garvan as to his own stockholdings. Now, while we are at it, I think we are entitled to know whether it is the claim of the Government that any officer of this company or any director ever did hold stock in this company.

MR. ANDERSON: I do not think I am compelled to make plain my position on the record. What is offered is not the best evidence, and I call for the best evidence.

MR. KRESEL: Very well. If the Government declines to make its position plain, I will go on.

THE COURT: Are the records in evidence?

MR. KRESEL: The stock certificate book, I do not believe, is in evidence. I will put that in in the morning, your Honor.

MR. ANDERSON: I think possibly we could get by this difficulty. All I want is not to be precluded on this evidence by the statement of a conclusion by a witness, and I will state what I understand the record to show. If it is agreed that that is what it shows, why, I am willing to stand on that for argument.

As I recall, the record shows that when the company was organized the three formal incorporators subscribed for thirteen shares of stock.

MR. KRESEL: Fifteen.

MR. ANDERSON: Fifteen shares of the stock. One of them thirteen, and each of the other two, one.

MR. KRESEL: Exactly.

MR. ANDERSON: That when they resigned from their formal positions, they assigned to Mr. Garvan the right to the thirteen shares subscription, to Mr. Corbett the right to one share subscription, and to Mr. McKay the right to one share subscription, and that right continued on the records without any change until late in 1922, when it was formally released by these gentlemen by a record release to The Chemical Foundation. Isn't that so?

MR. KRESEL: What you mean is that the minutes show that they released.

MR. ANDERSON: They filed a formal paper releasing any right to that subscription. As I recall, those are substantially the facts, and if the witnes wants to testify to these facts, or if counsel wishes to agree to those facts, then I will waive any claim to have the stock books produced and the formal proof on that subject.

MR. KRESEL: There is no necessity either for the witness to admit that or for counsel to concede that. That is the record that you have put in here, and, of course, it speaks for itself.

MR. ANDERSON: That is all. My only objection was to the witness testifying to the conclusion that he was never a stockholder.

MR. KRESEL: Now that Colonel Anderson has reviewed to your Honor the state of the record, I will repeat my question as to whether the Government claims upon that record that either Mr. Garvan or Mr. Corbett or Mr. McKay were stockholders of the company.

MR. ANDERSON: My answer is the Government reserves the right to make any claim upon that record they can do in law.

THE COURT: One of the difficulties that I am having, Colonel Anderson, and I am not stating this in the way of criticism at all, is in finding your major premise for any of your propositions. I am finding it difficult to draw any conclusions from a minor premise alone. It seems to me that you are leaving me, during the taking of the testimony, wholly without a major premise for any syllogism, and reserving the right to lay down any major premise that you please at the time of the final argument. Am I right about that, Colonel Anderson?

MR. ANDERSON: I do not think so, sir. I think

I have been somewhat laboriously, and certainly very extensively, frank in stating to your Honor my positions on the law, my understanding of the facts, and my conclusions as to what they show.

THE COURT: Then let us take this immediate one. Do you care to state what your major premise is on that conclusion? You agree as to facts as disclosed by the record. If it is conceded that they are useless or that they do not establish that the witness was a stockholder, then we can, I assume, go on without paying any more attention to that. If, on the other hand, you are going to state that that brings it within the principle that they are stockholders, then we have another minor issue in the case.

MR. ANDERSON: The only question there is whether any other evidence can be introduced. If they can, why, counsel is quite at liberty to introduce it. We have concluded our evidence on the subject.

THE COURT: I know; but you are leaving me without a major premise. So we will have to go on on that basis.

MR. ANDERSON: I will state this: that the Government will contend in that situation that the position taken by counsel here that they had no stock interest in this company of any kind is not sound; that the right to subscribe for stock and receive stock is a valuable right, and that it was an interest. I have put in the evidence its obvious application, and if my position is sound or unsound, it is for counsel to meet the evidence. If they can prove any different facts from those on the record, they are at perfect liberty to do so.

THE COURT: That is true, Colonel Anderson. No doubt about that. But if the Government can state what use it proposes to make or use it can

make, if any, out of a particular bit of evidence, it seems to me it probably narrows and shortens the issues.

MR. ANDERSON: I am only too glad to answer your Honor's question in that regard. I have already stated the evidence could have but one relationship, and that is, to show who were stockholders of the company, or who had a right to beholders of the company. Now, who were stockcome stockholders of the company, is a question affecting the relations of these gentlemen to the transaction. What that is and whether it has any legal effect is for your Honor to decide on final argument.

MR. KRESEL: It is all right, your Honor; I will produce tomorrow the stock certificate book, and I will ask your Honor to let me put it in for the purpose of showing who the stockholders were.

MR. ANDERSON: If the counsel will produce the stock certificate book and it does not appear these gentlemen were ever registered owners of stock, I am perfectly willing to admit whatever the facts are, without putting the books in evidence.

MR. KRESEL: Do you mean to say, Colonel Anderson, that you do not now know what our stock certificate book shows?

MR. ANDERSON: I personally do not.

MR. KRESEL: With your accountants having been over our books for a period of six weeks?

MR. ANDERSON: Mr. Kresel——

MR. KRESEL: You have been misinformed, Colonel.

MR. ANDERSON: I did not say that these gentlemen were registered stockholders, your Honor. I said if he would let me see the books or it appeared they were not registered stockholders, I would not require him to burden the record with the formal evidence, but would admit whatever the facts

were. Now, I have not had a chance to examine those books personally. I do not know what the facts are, and the facts in this case are too voluminous for me to undertake to be familiar with them all.

MR. KRESEL: All right, Colonel, I will produce the book in the morning. May I proceed your Honor?

THE COURT: Yes.

Q. 227. Mr. Garvan, it is in evidence here that you executed the first or so-called big assignment of these patents to The Chemical Foundation, which is dated April 10, 1919. That instrument is Exhibit H-1 annexed to the bill. From that instrument I read the following language from page 415 of the bill:

> "All of the rights, interests, and benefits under the agreements enumerated in Schedule C hereto annexed:
>
> "All as more specifically described and set forth in the requirements or demands relating to said letters patent of the United States, applications for letters patent of the United States, trademarks and registrations thereof, copyrights and rights, interests and benefits under agreements issued by said A. Mitchell Palmer, as Alien Property Custodian, or by me as Alien Property Custodian without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation (Inc.), or otherwise, and subject only to the provisions of a certain release to the United States of America, bearing even date herewith, and to the rights of citizens of the United States or of friendly nations", etc.

I direct your particular attention to the clause which says this conveyance is made without any reservation or qualification whatsoever, "Whether by reason of anything contained in the charter or by-laws

of the said The Chemical Foundation (Inc.), or otherwise". Before I put the question to you I direct your attention to the fact that in an assignment which is Exhibit H-6 annexed to the bill of complaint likewise signed by you, dated June 21, 1919, there is similar language. I read from page 435 of the bill, your Honor, the language as follows: "without any reservation or qualification whatsoever, whether by reason of anything contained in the charter or by-laws of the said The Chemical Foundation (Inc.), or otherwise."

Also in Exhibit H-19, which is another assignment executed by you on the 19th of February, 1921, I find this language: "and to the full extent to which I am or may become entitled to the same, including all claims and demands for profits and damages recoverable", etc.

Will you please state the reason for the language that I have read, namely, that these conveyances are made without any reservation whatsoever, whether by reason of anything contained in the charter or by-laws of The Chemical Foundation or otherwise?

MR. ANDERSON: If your Honor please, we of course object to that question, first as an effort to construe a written agreement, second, as an effort to vary a written agreement and to show by parol what the meaning is and the reason for the execution of the written agreement, all of which is merged in the agreement.

MR. KRESEL: I disclaim any desire either to vary the instrument or to construe the instrument. I am simply inquiring for the reason——

THE COURT: I had assumed before you finished your question you were going to ask for the particular circumstances under which those agreements were executed. Unless your question calls for those circumstances, although your use of the word "reason"——

MR. KRESEL: Will your Honor permit me to withdraw the question. I will recast it and perhaps avoid the objection.

Q. 228. Mr. Garvan, I have directed your attention to these three assignments. I now ask you to state, if you will, the circumstances under which these assignments were executed, with particular reference to the language I have read?

MR. ANDERSON: I make the same objection to the circumstances and the negotiations leading up to these agreements. There is not the slightest doubt about what it says or what it means. It is nothing more than coming in the back door to construe the agreement. Therefore, I object to the question and any answer thereto, or any other question relating to these agreements or to the facts and circumstances preceding these agreements, with reference to the matters covered thereby, upon the ground that the agreements speak for themselves and it is not competent for the witness to testify or to undertake to testify or construe or explain the same.

MR. KRESEL: Will your Honor hear me a minute. In view of the charge of conspiracy here, in view of the charge that these officials were duped into making these assignments, in view of the emphasis that has been laid by counsel for the Government upon this particular language both in his opening statement and when he put them in as exhibits, we claim the right that this official has to explain why that language was used and the circumstances that gave rise to its use. I repeat what I said this morning, your Honor. If this man's motives are imputed, if it is charged that he had ulterior designs in this matter, as it is charged, and we can not wink at it, he has a right to explain.

THE COURT: The same question arose with respect to reasons given by Mr. Palmer and I——

MR. ANDERSON: If your Honor please, here is an agreement executed by this witness, a deed. I confess that my knowledge of the law and practise is limited, but this is the first suggestion I have ever heard in court that a man can make a deed and then come in and say why he used certain language in the deed. I never heard such a thing suggested before; and while the charge of conspiracy opens up the evidence to some extent, it does not abolish all the rules of evidence as to what a witness can testify about a written instrument. I do not want to argue it; it seems useless for me to argue it, and I make my objection, and therefore your Honor will rule as you deem best.

THE COURT: What is the question that you have put?

(Q. 228. repeated as recorded above.)

THE COURT: The answer may be taken.

MR. ANDERSON: I note an exception if your Honor please.

A. The assignments were drawn by our patent counsel, Mr. Hoguet. Mr. Hoguet informed me that it was necessary from the patent lawyer's standpoint that there be absolutely no reservations upon the transfer of patents if we were to be able to meet the German after the war or to meet any infringer; and he said that this in no way relieved the obligations, our obligations under the charter, but that the conveyance to the Foundation should be unrestricted and unlimited if we expected to be able to bring infringement suits, and so forth, and that nothing should remain in the German or in the A. P. C. I knowing nothing of patent law——

Q. 229. What is that last statement?

A. I knowing nothing of patent law or what constituted a valid transfer of a patent, agreed to it.

MR. ANDERSON: Now that the answer has been made I move to strike it out for the reasons already stated, and for the further reason that Mr. Hoguet's expression of the meaning of a written instrument is certainly not evidence here.

THE COURT: I deny the motion, although I do not now see any pertinency the statement embodied in the last answer has with respect to the issues in this case. It will remain in under the general rule.

MR. ANDERSON: I note an exception.

Q. 230. Mr. Garvan, since the conveyance of these patents to The Chemical Foundation, made by the Alien Property Custodian, has the Chemical Foundation issued any licenses?

A. It has.

Q. 231. Have you prepared a list of all such licenses issued?

A. I have. Under my direction. I have not prepared it. It was prepared under my authority.

Q. 232. I show you this document (handing witness paper). Is that the list of all the licenses that have been issued by The Chemical Foundation from its inception to December 31, 1922?

A. It is.

MR. KRESEL: I offer this in evidence. I think the Government has already seen this.

MR. ANDERSON: One moment. If your Honor please, I do not object to the introduction of this statement, as I understand it is made up from the original licenses, reserving the right, as was agreed by counsel, to check the same and call attention to any errors therein.

MR. KRESEL: Certainly.

MR. ANDERSON: In the absence of such knowl-

edge, I will assume that this statement is correct and I will not require the production of the original licenses in court.

MR. KRESEL: The licenses have just arrived now and you may have access to them, Colonel, at your leisure.

Same received in evidence and marked "Defendant's Exhibit No. 83." (*See Exhibits, Vol. IV, page 2583.*)

MR. KRESEL: This exhibit, your Honor, I shall take only a moment to explain to you. The information contained thereon is the following: The number of the license is given, the name of the person to whom the license was issued, the product that is covers, the royalty rate, the date when the license was issued, the number of the patent which it covers, the expiration date of the patent, the amount of royalty received, the amount of license fee received and the total amount received. That runs down to December 31, 1922, showing that during that period 379 licenses had been issued and that the total amount collected by The Chemical Foundation on those licenses was $305,106.77.

MR. ANDERSON: May I ask a question? It was suggested this morning that they insert after the name of the licensee the form on which the license was issued. As I understand, there are three forms.

MR. KRESEL: Two I know of.

MR. ANDERSON: Two for patents and one for trademarks.

MR. KRESEL: Oh, two for patents.

MR. ANDERSON: The two for patents have been put in evidence and can be identified by the exhibit number, and the trademark form can be put in, and then if they would put on the exhibit, I

would like it to be understood that they would be on the exhibit at the appropriate place the form on which that license is issued, in order that we may identify the license.

MR. KRESEL: I will be very glad to do that.

MR. ANDERSON: With that understanding I will not object to this in its present form.

MR. KRESEL: Then I will now offer, pursuant to that understanding, a form of trademark license.

Received in evidence and marked "Defendant's Exhibit No. 84." (*See Exhibits, Vol. IV, page 2619.*)

Q. 233. Without putting in evidence, Mr. Garvan, all of the licenses that have been issued, I am going to ask you, with Colonel Anderson's permission, whether it is a fact that The Chemical Foundation has never issued an exclusive license?

A. It is.

Q. 234. All licenses have been non-exclusive licenses?

A. Certainly.

Q. 235. Has The Chemical Foundation ever declined to issue a license to anybody?

A. Twice.

Q. 236. When?

A. Twice.

Q. 237. Will you state the circumstances of each case?

A. One was a young man who wanted a license on salvarsan.

Q. 238. Do you remember his name?

A. I do not. We will get it. We told him that we did not think he was equipped, salvarsan being a dangerous drug, but if he would go to the United States Health Department and satisfy himself that he had the training and ability to make it and get a certificate from them we would issue a license. He studied a

year and a half or some time like that, got the certificate, and came back and got the license.

Q. 239. That is one case.

A. That is one case.

Q. 240. What is the other one?

A. The other is a case where some people issued stock on something and stated in their prospectus before they ever came near us that they had licenses from The Chemical Foundation. Investigation showed that it was a fly-by-night stock-jobbing game, that they had no factory, and no intention of manufacturing. It was a stock-selling scheme and we declined to issue the license.

Q. 241. With those two exceptions have you issued licenses to all American citizens that wanted them?

A. We have.

Q. 242. Have you made any distinction in the royalties that you charged upon the same kind of license as between different licensees?

A. We have not.

MR. ANDERSON: One moment. I think that is going a little bit far. The statement speaks for itself as to licenses and royalties charged, and I do not think the witness ought to interpret his licenses. You may let the evidence go in to that extent.

MR. KRESEL: There can be no harm, Colonel. I am not going to pursue the subject. Of course, we could dig that out of a long exhibit I put in, but I am sure there is no harm in his making the statement.

THE COURT: Is the objection withdrawn?

MR. ANDERSON: I think that statement ought to be stricken out. I think that is a question of argument from the statement itself.

THE COURT: Does your statement show the terms under which the licenses were issued?

MR. KRESEL: Yes, your Honor.

THE COURT: You may show what from your point of view that statement does show with respect to this matter and I shall sustain the objection because it is documentary and the objection is made on that. Any time you desire, I will be very glad to hear your statement.

MR. KRESEL: I will not stop to do that now.

Q. 243. Has The Chemical Foundation given to the United States Government a license covering all of the patents that were ever conveyed to it?

MR. ANDERSON: Of course, I object to that question. The license can be produced.

THE COURT: The license has been offered, has it not?

MR. KRESEL: No, your Honor. I am just about to put it in. I will re-cast the question.

Q. 244. Has The Chemical Foundation given to the United States Government a license?

A. It has.

Q. 245. I show you this instrument and ask you to state whether that is the first license that was given by The Chemical Foundation to the United States Government?

A. It was.

Q. 246. Please give me the date?

A. February 26, 1921.

MR. KRESEL: If your Honor please, the original is in the possession of the Government, but by stipulation between Mr. Galloway and ourselves we are permitted to use a copy.

MR. GALLOWAY: Subject to correction.

MR. KRESEL: Subject to correction, certainly. I should have much preferred to have the original in court, but I understand they cannot locate it. May this be marked?

MR. ANDERSON: Before that is offered, if your

Honor please, I wish to note an objection to the introduction of that document, not on the ground that it is a copy—that we are agreed upon—but because there is no evidence here that any officer of the Government of the United States authorized to accept such a paper has accepted it; and, therefore, it is not a license or contract between The Chemical Foundation, whatever it may be, and the Government of the United States unless it is accepted by some officer or entered into by some officer who is authorized to discharge the function of accepting that license.

MR. KRESEL: Will your Honor permit me for the moment to withdraw that because I have made an error. That was not the first one and I want to put them in in their chronological order.

THE WITNESS: Then I want to withdraw my answer.

MR. KRESEL: Yes. May the answer to the last question be stricken out.

Q. 247. Mr. Garvan, I show this instrument and ask you whether that is a copy of a release given by the Alien Property Custodian to the United States Government on the tenth day of April, 1919?

MR. ANDERSON: I shall object to that question and any answer thereto on the ground that while the witness can identify a certain instrument as executed by the Alien Property Custodian and prove delivery to the United States Government, he cannot prove that it is a release and it is not delivered to the United States Government until proof is made that it was accepted by an officer of the Government authorized to accept it in accordance with its terms. I have not read the paper. I do not know what it is. But that must be proved.

MR. KRESEL: One step at a time, please.

MR. ANDERSON: Very good, sir. I object to

that question and answer because the question embodies several statements, that it was a release given to the United States Government, which implies the character of the paper and the act of delivery, all of which must be proved.

THE COURT: I think the objection is well taken, so far as the question embodies the term "release." I will dispose of that first and if you have anything to say I will hear you on the other.

MR. KRESEL: No, your Honor. I understand that the objection is sustained?

THE COURT: The objection to that question is sustained.

Q. 248. Look at this instrument that I now show you and state whether it is a copy of an instrument that you signed as Alien Property Custodian on the 10th of April, 1919?

A. It is. I have looked at it.

Q. 249. I show you a copy of a letter dated April 15, 1919, and ask you whether you wrote that letter to Honorable A. Mitchell Palmer, Attorney General?

A. I did. That is my signature.

Q. 250. Is the instrument that I first showed you as having been signed by you on the 10th of April, 1919, a copy of the instrument that was enclosed with that letter?

A. Yes.

MR. KRESEL: I now offer in evidence the letter and the copy of the instrument; and as to those, I state that counsel for the Government say that they cannot locate the original. I understand you had it and then lost it again, or something like that.

MR. GALLOWAY: I have seen it. I do not know where it is now. I have seen it, but I do not say I have lost it.

MR. KRESEL: May the letter be marked as Exhibit No. 85 and the instrument No. 85-A?

MR. ANDERSON: I object to the introduction of that letter and instrument, not on the formal grounds of copies, but on the ground that it does not appear that the Honorable A. Mitchell Palmer, Attorney General of the United States, was authorized to accept any license from the Alien Property Custodian to the United States or to accept the document introduced in evidence, and there is nothing in his position as Attorney General, so far as I know, that authorizes any such act.

MR. KRESEL: I do not understand that it is incumbent on us to prove the authority of the official to accept. But if it were, we say that the Attorney General of the United States has authority on behalf of the United States Government to accept documents for it. He has as much authority under the Executive Acts as the Secretary of War or the Secretary of Navy may have and under these circumstances we say that this evidence is admissible. It is the delivery of an instrument pursuant to what we claim to be a contract made here. It is an instrument that is referred to in the exhibit which the Government has put in, namely, the original assignment of April 10, 1919, and your Honor will recall, as I read from page 416 of the bill, the conveyance is subject only to the provisions of a certain release to the United States of America bearing even date therewith. That is the release that I am now offering.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibits Nos. 85 and 85-A." (*See Exhibits, Vol. IV, pages 2623 and 2624.*)

MR. KRESEL: I desire to read two paragraphs

of this, with your Honor's permission. (Reading.)

Now, the Schedules A, B and C which are referred to in that instrument are not annexed, and we are privileged to annex them hereafter.

MR. ANDERSON: There is no objection to that, of course. Now, I wish to add to my former objection, and in order to make it in proper form, to move to strike out this document and letter for the reasons already stated in my objection to the introduction thereof; for the further reason that it appears, according to the testimony of Mr. Palmer, that he negotiated the sale of this property and its release on the other side. He could not act on both sides and, therefore, could not affect the rights of the United States, acting by the Attorney General; and, in the third place, for the reason that there is no provision of the Alien Property Act or the laws of the United States which confers upon the Alien Property Custodian the power to execute any such release, whether to the United States or anybody else, or to convey or undertake to convey, or to release, or undertake to release, any such rights as therein provided.

MR. KRESEL: Does your Honor desire to hear me on that proposition?

MR. ANDERSON: I should have added, without adequate consideration, which is embraced in my general statement as to the character of the paper.

THE COURT: I am somewhat hazy with respect to this particular transaction. I was under the impression that the release had been signed by The Chemical Foundation.

MR. KRESEL: No, your Honor. I withdrew that.

THE COURT: That is the license that you withdrew.

MR. KRESEL: Yes.

THE COURT: But this pertains to the accumulated royalties or license fees, as I understand it, does it not?

MR. KRESEL: The one that has just come in?

THE COURT: Yes.

MR. KRESEL: No, sir, that is a release.

THE COURT: Of what?

MR. KRESEL: From the Alien Property Custodian to the United States of all damages that might have run against the Government for using these copyrights and trademarks prior thereto.

THE COURT: It has nothing to do with the accumulated license fees?

MR. KRESEL: No, your Honor, not at all. That is only one of the instruments. I have several that I am going to put in.

THE COURT: I wanted to place this one, and I do not for the moment.

MR. KRESEL: Your Honor will see this is the same date that the first assignment to The Chemical Foundation was made, and the assignment is made expressly subject to this release.

THE COURT: We have to have that paper to see what The Chemical Foundation got. If valid, The Chemical Foundation acquired the rights in the patents and trademarks without right to relief against the United States for anything that it has done. That is your contention?

MR. KRESEL: Yes, sir.

THE COURT: The contention of the Government, I assume, is that that release is invalid for one or more reasons, and consequently, The Chemical Foundation is now in a position, if this transaction is not set aside, to maintain an action

against the United States, although there is no authority for its suing the United States, as I understand it.

MR. ANDERSON: I do not say that The Chemical Foundation would be in a position to do it, because The Chemical Foundation may have estopped itself to bring an action against the United States; but the release in itself is an act entirely outside of the authority of an officer of the Government who undertook to execute it, and does not constitute evidence of any kind.

THE COURT: Did you put in evidence the assignment which was made subject to that?

MR. ANDERSON: Yes, sir, that is all in evidence.

THE COURT: Would not that offer in itself make that release admissible for whatever it is worth?

MR. ANDERSON: I do not know, if your Honor please; but I feel I ought to object to that as nothing but a blank piece of paper.

THE COURT: Yes, I understand it.

MR. ANDERSON: Of course, I do not ask your Honor to decide it now. I am just making the objection and your Honor may let it go in under the objection, as far as I am concerned.

THE COURT: But the reason for not deciding it is possibly that you are going to introduce the next one. However, we will leave that open.

MR. ANDERSON: I merely want to preserve the record.

THE COURT: I was trying to find out where we were. I understand you now.

Q. 251. Now, Mr. Garvan, I return to this instrument of February 26, 1921. Please examine it again and state whether The Chemical Foundation gave that instrument to the United States Government?

MR. ANDERSON: I wish you would frame your question, whether The Chemical Foundation executed that instrument.

Q. 251. (Continued.) Whether The Chemical Foundation executed that instrument.

MR. KRESEL: I will accept the suggestion.

A. This is not the original.

Q. 252. This is a copy?

A. I am sure of it. I am sure of the girl that signed the certificate.

MR. KRESEL: I ask that this be marked for identification.

(Marked "Defendant's Exhibit K" for identification.)

Q. 253. I show you a photostat copy of an original instrument signed by The Chemical Foundation, Incorporated, by Francis P. Garvan as president, and ask you to state whether that was signed by you as president of The Chemical Foundation?

A. It was. It is my signature.

MR. KRESEL: I offer this instrument in evidence and I direct counsel's attention to the fact that on the face of it it bears an acceptance on behalf of the Government, by Theodore Roosevelt, Jr., acting Secretary of the Navy.

MR. ANDERSON: I assume that is the signature of Mr. Roosevelt. I do not know it myself. But even then, I object to the admission of this instrument on the ground that it does not appear that Colonel Roosevelt had any authority whatever from the Government of the United States to accept this instrument, whatever it is, or to deal with the subject matter involved. I recognize that that is a question that would require a great deal of argument, and I merely make the objection to preserve the record.

MR. KRESEL: I do not believe, your Honor,

that it would require a great deal of argument at all. Our position is that it is not incumbent upon us to prove the authority. Moreover, if it were the signature of this gentleman who holds this office, it is *prima facie* proof of his authority. He is an officer of the Government and if he had not the authority, they can prove that he had not.

I offer this instrument in evidence.

MR. ANDERSON: If your Honor please, of course, that is in addition to all my general objections that it is immaterial and irrelevant.

THE COURT: I understand. But I do not know what this is.

MR. KRESEL: Of course. I could not state it in my question. Your Honor will realize that. The question would have been objected to. This, your Honor, is a license and release from The Chemical Foundation to the United States Government covering all of the patents that were ever conveyed to The Chemical Foundation.

THE COURT: A release of what?

MR. KRESEL: A release of all claims for infringement by the Government.

THE COURT: It is another release?

MR. KRESEL: It is another release.

THE COURT: In the same language?

MR. KRESEL: If your Honor will let me read the one that is now going in evidence, you will see that the one that I have had marked for identification was set aside by the larger one that is now going in evidence. That is the reason I have not pressed putting it in evidence.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 86." (*See Exhibits, Vol. IV, page 2629.*)

MR. KRESEL: If your Honor will indulge me

for a few minutes while I read a few paragraphs of this instrument. (Reading.)

There are attached to the instrument various schedules. They are quite numerous and of course I shall not read them.

Gentlemen, may I have a stipulation that this instrument has been or is now being recorded by the Government of the United States in the Patent Office?

MR. ANDERSON: If you state the date, and it is a fact. Do you know, Mr. Galloway?

MR. GALLOWAY: My information is that it has been filed.

MR. KRESEL: Your information is that it has been recorded.

MR. GALLOWAY: That is the information which we received.

MR. ANDERSON: In the second place, I do not know who put it there and by what authority it was put there. We are making inquiry and we will try to find out the facts. We have got a man down there now trying to get the facts, but I do not know anything about them and have not enough facts to agree upon it.

Q. 254. Mr. Garvan, while you were Alien Property Custodian did you execute an instrument of which I show you a copy, which has been produced from the office of the Alien Property Custodian by the Government?

A. Is this the fifty-seven hundred patent license?

Q. 255. That is my understanding.

A. Yes, I executed this.

MR. KRESEL: I offer in evidence, if your Honor please, instrument executed by the Alien Property Custodian on December 20, 1920, together with the schedules thereto attached. With your

Honor's permission, we will substitute a copy instead of the original.

THE COURT: This is which one?

MR. KRESEL: If I may state, this is a license and release from the Alien Property Custodian to the Government of the United States as represented by the Secretary of the Navy covering 5,700 German patents; the license and release being made by the Alien Property Custodian to the Navy Department for a consideration, as I shall show, of $100,000. This was made on the 20th of December, 1920, by Mr. Garvan as Alien Property Custodian. The original instrument, I understand, is in the possession of the Government. What is here being produced is the copy which is on file in the office of the Alien Property Custodian. Is that right?

MR. ANDERSON: I think so.

THE COURT: Is there objection?

MR. ANDERSON: If your Honor please, from a hurried examination of this document which while produced by the Government I confess not to have before seen, I merely want in addition to my general objection on the ground of immateriality and irrelevancy and so on, to note the additional objection that it does not appear that the Alien Property Custodian had any authority to execute any such document or that the Secretary of the Navy had any authority to accept any such document or to make any such contract with respect to the same.

THE COURT: It is not an assignment, but a license?

MR. KRESEL: A license and release, your Honor.

THE COURT: Where is the title to those patents now?

MR. KRESEL: I assume that the title remains in the Alien Property Custodian.

THE COURT: Can the Alien Property Custodian, as agent of the United State, license these patents to the United States?

MR. KRESEL: There is no question about that, your Honor. Under the Act he has the right to deal with the property as if he were the absolute owner. He, therefore, has a right to license.

THE COURT: I can understand how he can do that without passing upon the construction of the act. I can understand how that might possibly happen with any person except the United States. It is admitted.

MR. KRESEL: I shall be very glad to give your Honor my views, but I think nothing is going to be gained by it at this time.

Received in evidence and marked "Defendant's Exhibit No. 87." (*See Exhibits, Vol. IV, page 2635.*)

Q. 256. Before you executed this instrument which I have just put in evidence, some of which I shall read in a little while, did you receive a letter from Mr. Franklin D. Roosevelt, Acting Secretary of the Navy, of which I show you a copy?

A. I did.

MR. KRESEL: I offer that in evidence.

MR. ANDERSON: Objected to on the same grounds as the preceding documents.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 88." (*See Exhibits, Vol. IV, page 2652.*)

MR. KRESEL: I shall first read the letter. It is dated at the Navy Department in Washington, March 16, 1920. (Reading.) Now I read from Defendant's Exhibit No. 87. It is dated Decem-

ber 20, 1920. After reciting the appointment of Mr. Palmer as Alien Property Custodian and Mr. Garvan as his successor, and reciting the seizure of a large number of patents, the instrument proceeds as follows (reading).

MR. KRESEL: That is all I desire to read of that.

THE COURT: That is the release executed by the Alien Property Custodian to the United States?

MR. KRESEL: To the United States. You see, your Honor, you now have before you two instruments, one covering a release and license to the Government, covering all of the patents conveyed to The Chemical Foundation.

THE COURT: And accepted by the Secretary of the Navy.

MR. KRESEL: By the acting Secretary of the Navy. Then you have this license and release.

THE COURT: For 5,700 patents?

MR. KRESEL: For 5,700 additional patents, German patents held by the Alien Property Custodian.

THE COURT: For $100,000?

MR. KRESEL: For $100,000,

THE COURT: What is the nature of those patents, Mr. Kresel?

MR. KRESEL: Oh, your Honor, I am going to put in several classifications of those. Briefly speaking, let me tell your Honor. They were the most important patents, covering patents on munitions, gun carriages——

THE COURT: You call them munition patents, then, just for convenience.

MR. KRESEL: Mostly munition patents; but then there were also surgical patents, chemical patents. They were of all sorts. There is a

printed list of those contained in the report of the Alien Property Custodian made to Congress in 1922, and when I come to the examination of a witness, I am going to bring out some of that and your Honor will learn about it.

Q. 257. Mr. Garvan, I show you this folder, and ask you to examine it. It is produced by the Government from the files of the Alien Property Custodian.

MR. KRESEL: Is that right, Mr. Galloway?

MR. GALLOWAY: Yes, that is right. That is only an abstract, however.

Q. 257. (Continued.) I wish you would examine that.

MR. KRESEL: May I lead him in this question? I think it will save time.

MR. ANDERSON: I would like to know what it is about before I agree to that. If it is immaterial I do not care anything about it.

MR. KRESEL: Listen to my question then and you will get it.

Q. 258. I ask you to state whether that is an instrument showing that the Alien Property Custodian on the sixth day of February, 1919, assigned to the United States Government, as represented by the Secretary of the Navy, a number of patents, a list of which is attached hereto, for a consideration of $1,190.

MR. KRESEL: I will show it to Colonel Anderson. Perhaps we could agree, Mr. Galloway, without putting a question to the witness. If you will permit me I will dictate the stipulation and you may see if it is correct. May I do that, your Honor?

THE COURT: Yes.

MR. KRESEL: It is stipulated and agreed that on the sixth day of February, 1919, A. Mitchell Palmer, as Alien Property Custodian, conveyed to the United States of America——

MR. ANDERSON: You are wrong, just stop right there. I am not going to agree that anything was executed and assigned. You can say that he executed a certain instrument.

MR. KRESEL: Executed an assignment.

MR. ANDERSON: No. If there is going to be any legal effect I will not agree upon it. I do not mind agreeing to the fact, but not to the legal effect. If your Honor please, I do not want to appear unaccommodating.

MR. KRESEL: No, I am not charging you with that.

MR. ANDERSON: Our view is that these papers are not only immaterial because two wrongs cannot make a right, but, in the second place, they have not anything to do with this case. If they are going to be proved, it is important that the facts should be shown, just what the instrument was.

MR. KRESEL: The question is what the instrument was. We asked you to produce it and you have not. You have it and we have not.

MR. ANDERSON: I think I ought to state to your Honor that your Honor may not misunderstand, we have sent men to Washington nearly every day to get papers counsel has asked for. Whenever he asked for them we sent immediately to Washington. I just had a telephone message from the State Department saying they would not let their records go out of their Department except in charge of one of their officers. I can subpoena them and let that officer come up here with the papers wanted by Mr. Kresel and he will be here tomorrow. I cannot produce all of the records of that office when Mr. Kresel calls for them.

MR. KRESEL: What I have here, your Honor, is an abstract.

THE COURT: Do you want to put that into the evidence?

MR. KRESEL: I want to get from the witness the facts instead of putting this in evidence. I thought we could agree on it, but apparently we cannot.

Q. 259. I wish you would take this, Mr. Garvan, and state whether or no on or about the sixth day of February, 1919, an assignment of the patents mentioned in Schedule A, which is here, was made by the Alien Property Custodian to the United States of America, represented by the Secretary of the Navy.

MR. ANDERSON: If your Honor please, I have to object because I cannot conceive that the question as asked, whether an assignment was made, is other than a legal conclusion to be drawn only from the written instrument, and I will do my best to help get the written instrument. It is not in the Alien Property Custodian's records, and we will try to get it if we can, but if this matter is important at all, which I do not think it is, it is quite important, and, therefore, it is important that it should be proved in the proper way. Therefore, I have to object to this.

MR. KRESEL: If your Honor please, we have asked the other side to produce these instruments for us. They have had considerable time and yesterday they produced what I have now in court. Now, pardon me a minute, Colonel, I do not mean to pick any quarrel with you at all. I withdraw that for the present and I am going to request the Government again to be good enough to make a search and try to produce these documents for me before the case closes. If they do not produce them, I shall ask your Honor to permit me to re-offer this.

THE COURT: This case will go on until all

the documents as well as all the evidence desired by either side is put upon the record.

MR. ANDERSON: Will your Honor permit me to explain. This document, I assume, is recorded in the Patent Office, and these gentlemen have just as much access to it as we have.

THE COURT: That statement is not in criticism of you, Colonel Anderson. It means if we have to wait for documents, we will have to wait for them. I realize there are numerous documents and it takes time to get them. All I have been attempting to indicate is that we will go on until the documents that you desire from the defendant are produced for you and that the documents that the defendant desires from the plaintiff are produced by you. There is no criticism expressed or implied.

MR. KRESEL: Not at all; I am not criticizing.

MR. ANDERSON: I would like to have it understood, however, that all of these documents are just as available to counsel as they are to us. They are not in the office of the Alien Property Custodian; a careful search has been made.

THE COURT: You are the Government of the United States, you are not Alien Property Custodian.

MR. ANDERSON: But the Patent Office is an office of public record, and they are available to the defendant as well as they are to us. We do not have to make copies of public records for him.

MR. KRESEL: If that is the position of Colonel Anderson, I am glad to understand it. If it is that he will not go to the trouble of having a copy obtained from the Patent Office, very well, I shall take that matter up and get it. Colonel Anderson, you are relieved from that.

MR. ANDERSON: That is the main point. If I can find it in the records of the Government I will produce it here, and that search is now going on. But if we do not find it in the records of the Government, I do not think it is up to the Government to go to the Patent Office and have a copy made.

THE COURT: That is a matter that I have not been asked to get into so far.

Q. 260. Mr. Garvan, have you had prepared and and do you now produce the statement giving the names of firms and corporations who have taken licenses from The Chemical Foundation since its inception, showing the business that those licensees are in?

A. I have.

MR. KRESEL: I offer this in evidence.

MR. ANDERSON: I do not know what it relates to, sir, so I will just let it go in under the general objection. I do not know what it means.

Received in evidence and marked "Defendant's Exhibit No. 89." (*See Exhibits, Vol. IV, page 2653.*)

MR. KRESEL: This instrument, your Honor, shows that 103 firms and corporations have taken out licenses from The Chemical Foundation. Your Honor will recall that I gave you the number of licenses taken out, something over 300, but those were taken out by 103 firms and corporations, and the business of each of those is given in this exhibit. They run from pharmaceuticals to therapeutic apparatus, aluminum alloys, vegetable oils, flux, tanning materials, etc.

MR. ANDERSON: Mr. Kresel, may I ask if that is the list of licenses that you put out, and whether all the licenses are now outstanding?

MR. KRESEL: Do you mean the first exhibit, the big one?

MR. ANDERSON: Does it include the Federal Trade Commission licenses?

MR. KRESEL: Oh, no.

MR. ANDERSON: Or contracts?

MR. KRESEL: Oh, No.

MR. ANDERSON: It is just licenses actually issued by The Chemical Foundation?

MR. KRESEL: Yes. Is there anything else?

MR. ANDERSON: No. I merely wanted to get that straight for my own information.

Q. 261. Mr. Garvan, have you had prepared a list showing the number of licenses each year and the number of patents involved?

A. Yes. (Handing counsel.)

MR. KRESEL: I offer that in evidence.

THE COURT: It is admitted.

Received in evidence and marked "Defendant's Exhibit No. 90." (*See Exhibits, Vol. IV, page 2658.*)

Q. 262. Mr. Garvan, how many patents altogether were assigned by the Alien Property Custodian to The Chemical Foundation?

A. 4,919.

MR. ANDERSON: May I ask if that is just patents, or trade marks?

MR. KRESEL: That is patents and applications which matured into patents.

MR. ANDERSON: But not trademarks?

MR. KRESEL: No, that does not include trademarks.

Q. 263. At the time of the assignment of these patents to the Foundation, was it subsequently found that any had in fact expired before the assignment?

A. Yes, just 54.

Q. 264. And did it also transpire that there had been duplications in the assignments?

A. Yes, sir, 20.

Q. 265. Up to December 31, 1922, had any of the patents so assigned to The Chemical Foundation expired?

A. Yes, sir.

Q. 266. How many?

A. 858.

MR. ANDERSON: Have you not got a list of those expired patents that you put in?

MR. KRESEL: No.

Q. 267. In addition to the 858 that had expired, had The Chemical Foundation reassigned any of the patents that it had received, either to the Alien Property Custodian or to others?

A. Yes, sir, 45.

Q. 268. So at the end of 1922 how many patents remained in the possession of The Chemical Foundation out of the total of 4,919 that had been assigned to it originally?

A. 4,016.

Q. 269. I am going to ask you to state how many patents were licensed by The Chemical Foundation from the inception of its existence to the end of 1922?

A. United States manufacturers, 440.

Q. 270. In other words, of all the 4,919 patents that had been assigned to The Chemical Foundation, licenses covering only 440 were ever issued?

A. Down to December 31, 1922.

Q. 271. Except the licenses to the United States Government that you have in mind?

A. Yes, sir.

Q. 272. Up to December 31, 1922, how many licenses were cancelled or expired of those that had already been issued?

A. 116.

Q. 273. So that on December 31, 1922, how many patents remained out under license?

A. 324; and there were four patents included in licenses out for signature.

Q. 274. Of the 4,919 patents that were assigned to The Chemical Foundation, how many ever produced any income to The Chemical Foundation?

A. 491.

Q. 275. Of the 491 patents that produced any income, how many, if any, expired by December 31, 1922?

A. 46, which produced $115,417.79.

Q. 276. And can you give the percentage of that amount of $115,417.79 to the total income that The Chemical Foundation received from all patents?

A. 17½ per cent.

Q. 277. On December 31, 1922, of the 4,016 patents that still remained unexpired, how many were producing any income?

A. 445, or about 11 per cent.

Q. 278. Then during the three years and nine months, which is the period between April, 1919, and December 31, 1922, is it the fact that 89 per cent. of the patents assigned to you earned nothing?

A. That is the fact.

THE COURT: Do you mean by that, by way of materials imported or licensed?

MR. KRESEL: In every way, your Honor, both ways.

Q. 279. Mr. Garvan, what were the total earnings of The Chemical Foundation for the period of three years and nine months from April, 1919, to December 31, 1922, upon all patents?

A. 661,706.28.

Q. 280. Have you had calculated the gross return per patent; using 4,919 patents as the number that had

been assigned to The Chemical Foundation, what does that show as the gross return per patent for the period of three years and nine months?

A. $134.52.

Q. 281. And per year?

A. $35.87.

Q. 282. Per patent?

A. Per patent.

Q. 283. Please look at this paper and state whether that is a correct statement of the income and expenses of The Chemical Foundation from its inception to December 31, 1922?

A. It is.

MR. KRESEL: I offer this in evidence.

THE COURT: Admitted

Received in evidence and marked "Defendant's Exhibit No. 91." (*See Exhibits, Vol. IV, page 2659.*)

MR. KRESEL: The statement shows that between April 10, 1919 and December 31, 1922, the total income from royalties and licenses, contracts acquired, trademarks, contributions received, interest and discount received, was a total of $699,925.83; that the total expenses for the period were $507,361.27, not including, however, any educational expense as to which we shall introduce evidence in a little while.

Deducting those expenses from the total income leave a net income before charging educational expense of $192,564.56. The educational expense during the period amounted to $340,245.76. That created a deficit as of December 31, 1922, of $147,681.20. In other words, according to our figures of the capital that had been paid in, the corporation had lost $147,681.20.

THE COURT: Does your statement show how the total of $507,000 was made up?

MR. KRESEL: Yes, your Honor. May I hand you a copy? (Handing paper.)

MR. ANDERSON: Mr. Kresel, you have reference there to Schedule 1 and Exhibit B. Are you going to introduce those?

MR. KRESEL: Yes, I am going to.

MR. ANDERSON: Because I would like to have the details.

MR. KRESEL: Certainly. You shall have it. I will put it in now.

I now offer in evidence Exhibit B referred to in this statement.

THE COURT: That is the educational expense item?

MR. KRESEL: That is the educational expense item.

THE COURT: Admitted

Received in evidence and marked "Defendant's Exhibit No. 91-A." (*See Exhibits, Vol. IV, page 2660.*)

Q. 284. Have you another copy, Mr. Garvan?

A. No, I have not another copy, apparently.

MR. KRESEL: This exhibit, your Honor, shows a statement of educational expense from April 18, 1919, to December 31, 1922. May I read a few items? Copies of "Creative Chemistry, $60,032.73. Postage and Express Charges, $12,904.01. Distributing letters in connection with "Creative Chemistry," $17,184. Copies of the "Future Independence and Progress of American Medicine in the Age of Chemistry, $28,573. Copies of an exhibit prepared under the auspices of the National Research Council, $9,802. "Aims and Purposes of The Chemical Foundation, Inc.," $11,694.

Copies of testimony of the Army and Navy, $2,300. Copies of "What the Chemist Has Done and May Do for Them in War and Peace, $2,700.

Before I put a question to the witness, I read from the third page of this Exhibit B, Colonel:

"Industrial Survey and Research Service Enlisting Aid of American Women in Chemical Research and making Chemical Survey of U. S., 9,139. Wilder D. Bancroft, work in connection with writing a book on the theory of dyeing, and a contribution to continue the publishing of the Journal of Physical Chemistry, $5,500. National Research Council, Development of Chemical Information useful to the industries of National Defense and Chemical Medicine, Standardization of Biological Stains and Chemical Exhibits," $11,000. And so I could go on.

THE COURT: Are the figures for the gross income different from those shown by the plaintiff?

MR. KRESEL: No, your Honor.

THE COURT: They are the same?

MR. KRESEL: Exactly the same. The total of this Exhibit B of educational expense is $340,245.76.

Q. 285. Mr. Garvan, I wish you would, in a very few words, state to the Court the extent of the expenditures made by the Foundation in what you call, or what appears upon your books as educational work. Would you like this to refresh your recollection (handing paper)?

A. Yes. In the first place, we became obligated for $10,000 on which we have paid, up to December 31, 1922, $7,500 for the National Research Council.

Q. 286. Tell us, please, what the National Research Council is?

A. The National Research Council is a continua-

tion of the National Warfare Council. It is a Government-controlled institution in Washington for the encouragement of research throughout the country. It is endowed by a gift from the Carnegie Foundation of some $5,000,000. It encourages research in any branch.

It is an outgrowth of the war. We promised them $10,000, and gave them $7,500 on it for the development of a survey of the chemical equipment and chemical capacity of the country, and in men, universities, schools, laboratories, and so forth, for the use of the Army and Navy, for the use in case of war, for the use of the Government in case of need, for the use of industries, for the use of the country in general, and that survey was taken of the country, and the results of it are in the National Research Council, available to the different Government departments, and anybody in the country who wants to find out anything about the personnel or equipment or capacity along any line of American chemistry.

American Chemists' Society. We became obligated for $25,000; paid them, up to December 31, 1922, $5,000 on that. During the years 1921 and 1922, during the slump in all industry, the American Chemists' Society felt they were unable to keep up their circulation of scientific literature, and it being in our development period, the Foundation contributed to them in order to prevent the lowering of the standard of the distribution. They distribute what are called abstracts of the progress of chemical science throughout the world, and that was given to them in order that the standard might be kept up.

The National Research Council were given $1,000 to help complete the work in connection with the compilation and publication of chemical and physical constants. That is a work that has been going on under

the supervision or co-operation of the Government, and chemical and physical constants are the working mathematics of chemists, and it was for the purpose of finishing that publication, to be made available to the whole country, that that was done.

The chemical survey was instituted and has not been completed, but will be resumed when we have funds, of surveying the country to find out in each district what researches needed chemical development, as to metals or agriculture or soil. It was done by states.

Q. 287. Who had charge of that?

A. Miss Obemauer. Through the departments down in Washington. It was a gathering together of all the Government information in the different departments, to be placed before the authorities of each state or group of states, with an endeavor to show them what the chemist could do for them if he was given a chance.

The National Research Council, we were obligated for $2,000, and gave $1,000 for the standardization of biological stains.

Q. 288. Will you explain that?

A. Before the war we were entirely dependent on Germany for biological stains, and that caused tremendous distress in this country. Diphtheria and pneumonia, all those diseases are now detected by means of biological stains. You take a smear of the throat and they cannot detect it, they cannot decide on the germ without having a piece of dye to put on the slide, which brings it out, so that the biologist can detect it. And they are used in botany, by all the botanists, by the bacteriologists, by the pathologists, by all our hospitals and all our research and educational institutions. We are entirely dependent on Germany for them, for the Griebler stains. That was the name in Germany.

We organized a committee on which was Dr. Kahn, who was the United States agricultural chemist in Northern New York, at the station there, and he got the different societies together, the Bacteriological Society, the Botany Societies, and so forth. They each appointed representatives and they, as a committee working with the industry, have developed these things until American stains are superior to anything that ever came out of Germany. It is a small business. It is only $60,000 worth of business. But every hospital and medical place in the country is absolutely dependent upon it. And we financed the standardization and the expenses of this committee, representing the scientists, to work with the industry to produce these stains, which is now accomplished.

Wilder D. Bancroft was the head Professor of Cornell and was, during the war, the Chief of the Chemical Warfare Service of the Government, and we contributed $3,000 to keep alive the Journal of Physical Chemistry, and became obligated for $50,000. more, $10,000 for the next five years. We formed an alliance with the London and English Chemical Societies, and in order to free English-speaking people from dependence upon German chemical literature, both nations have combined to bring out this magazine, which will offer the opportunity to English and American chemists to produce their discoveries without producing them in Germany; and the Foundation, on behalf of America, has promised to contribute $10,000 a year for five years to bring about that combination and develop that magazine to its fullest extent.

Three thousand five hundred and forty-four dollars and eighty-two cents; we co-operated with The Chemical Warfare Service through Mr. H. S. Kimberly in creating the exhibit——

Q. 289. Who is The Chemical Warfare Service?

A. It is the United States Government Chemical Warfare Service.

Q. 290. A branch of the Army?

A. A branch of the Army. We did this also through the National Research Council. This was for the getting up of an exhibit of the relation between the development of the chemical industries and our national defense. It was a physical exhibit which was exhibited before both branches of Congress and is now in the Smithsonian Institute in Washington.

Also for the expenses of taking moving pictures of the tests upon the different battleships of the new arm of aeroplane and chemical warfare. The United States Government allowed two vessels to be bombarded through the Air Service and the Chemical Warfare Service, and they had no money and we contributed the money to make the films of those two demonstrations to show that the day of the battleship was over and that the air and chemistry were the menaces of the next war.

Then there is $5,364.31 which is also part of that same expense, and they should have been combined, in this exhibit, and worked through the Chemical Warfare Service and Chemical Research Council.

Q. 291. Will you state something about the literature that The Chemical Foundation distributed?

A. Dr. Slosson was the editor of The Independent, and while there he had published articles which were taken up by the Century Company and published in their scientific series. His book was called "Creative Chemistry." We had nothing whatever to do with the publication of the book, and never saw the book until it was on the shelves of the book-stores. The book, if you have it there, is written in popular language to show the dependence of a country upon its chemical

development, both in peace and in war, and written for the person who has had no opportunity to study chemistry, or no one to explain its importance to him.

We found that the basis of the German chemical success was its educated public opinion, which found expression in its support of the development of the industry through schools, through the universities, through the research institutions, through government protection and aid and through the sustenance of the different industries. We started out to instill such an understanding in this country.

We circulated 73,867 copies of this "Creative Chemistry," sending them to the agricultural agents, Chambers of Commerce, Congressmen, 16,000 to consumers and business men, 1,365 to educators and to Government employees, Kiwanis Clubs, libraries and librarians, newspaper editors, paint and oil manufacturers, Scout Masters of the country working in conjunction with the Boy Scouts under their Executive Council. We sent those to the Boy Scout Masters with directions to the Scout Masters to gather their boys together and read this book to them.

MR. KRESEL: I commend that to your Honor as one of the finest works that has ever been written, in language that a layman can understand.

THE COURT: Do you want to give this book a number for identification?

MR. KRESEL: I think, your Honor, that would be a good idea.

(Marked "Defendant's Exhibit L" for Identification.)

A. (Continuing.) That was sent to all the schools and colleges and all the professors, not only the chemical professors, but other professors as well, because we found that the development of classical education

in this country had been entirely neglectful of a pandemic understanding of the sciences. So we sent them to the Trustees of the Universities and to all of the professors and members of the faculties and then to the students.

It is now the textbook in many of the colleges and schools. For instance, the State of Ohio requires it in every public school in the State and the publication of the book led Mr. Scripps of Scripps,-McCrea & Company to endow Mr. Slosson of the National Research Council with a gift of $500,000, the income of which is to be devoted to the spread of scientific literature in popular language throughout the country.

Q. 292. Will you proceed to the next step?

A. The next most important one is "The Future Independence and Progress of American Medicine in the Age of Chemistry."

We went to the American Chemical Society and asked them if their Committe on the relation of chemistry to medicine would work with us. They appointed a sub-committee consisting of Professor Stieglitz of Chicago, Reid Hunt of Harvard, Theat Johnson of Yale, F. R. Eldred of Eli Lilly & Company, Professor John J. Abel of Johns Hopkins, Professor Alsberg, the President of the Food Research Institute, Stanford University, then chief chemist of the Bureau of Agriculture, Raymond F. Bacon, Director of the Mellon Institute for Industrial Research at Pittsburgh, Mr. F. O. Taylor and Dr. Herty.

These gentlemen spent a year and a half reducing to popular expression the true relation and hope of medicine worked out in connection with chemistry for the future and we then sent out 620,000 copies of this report to the physicians and surgeons asking for the consideration of the report by physicians and surgeons, by mothers and fathers, by educators, hospital

directors and trustees and by others whose hearts are interested in the welfare of the future generation of American children. This was sent to every doctor in the country; it was sent to all the libraries, to all the clergymen, to 620,000 leading persons and if I may say so has worked a revolution in the study of medicine in this country.

MR. KRESEL: May I have that marked in the same way for identification?

(Marked "Defendant's Exhibit M" for Identification, 7/2/23.)

THE COURT: Is it the purpose to go through each of those?

MR. KRESEL: No, your Honor, there are only two or three.

A. (Continuing.) The next is "The Riddle of the Rhine." As, "Creative Chemistry" was intended to show to the country the necessity for the development of chemistry in reference to our industries and as the report of those famous scientists was supposed to demonstrate to the country its necessity of developing organic chemistry as a basis for the future development of medicine; so we took the best book known on the effect of gas warfare on the future of National Defense and chemistry. This book was written by Victor LeFevre who was a member of the English General staff and was really written under the supervision and direction of the British General staff with an introduction by Brig. General Henry Wilson who you remember was shot in the streets of London.

It was translated into French. I should have a copy of that. The introduction there was written by Marshal Foch and circulated through France. It is called "The Riddle of the Rhine" and gives the history of the use of chemical warfare and an explanation of it, written upon the theory that the peace resolution

and such pacifist stuff as that will never tend to end war; that a truthful understanding of the facts of what the next war will be is a better basis and a better hope for peace than idle swashbuckling gestures.

Q. 293. Mr. Garvan, without going into any further details of books——

A. I think the rest almost show themselves what they were.

THE COURT: Do you want this last book marked?

MR. KRESEL: Yes, your Honor.

(Book entitled "Riddle of the Rhine" marked "Defendant's Exhibit N for Identification, 7/2/23.")

Q. 294. Mr. Garvan, I wish you would return to the statement of income and expenses that we were discussing, which is Defendant's Exhibit No. 91.

A. Yes, sir.

Q. 295. The total of expenses not including the educational expense were $507,361.27, according to this Exhibit No. 91?

A. Yes, sir.

Q. 296. That, however, covers all your expenses not only on patents but also on trademarks, contracts, and so forth?

A. Yes, sir.

Q. 297. By the way, before you get away from it, did The Chemical Foundation ever realize anything on copyrights?

A. Not a dollar.

Q. 298. How much has The Chemical Foundation realized on the trademarks that were conveyed to it by the Alien Property Custodian?

A. Eleven thousand dollars.

Q. 299. Exactly? You will find it on that exhibit that you have before you. How much is the amount?

A. Eleven thousand one hundred and ninety-six dollars and seventy-six cents.

Q. 300. The proportionate amount of the total expenses not including educational work that is applicable to patents, was how much?

A. Two hundred and eighty-five thousand four hundred and thirty-four dollars and eight cents.

A. $285,434.08.

Q. 301. What period does that cover?

A. Up to December 31, 1922, from April 10th, 1919.

Q. 302. If you divide the gross expense of $285,438.08 over the 4919 patents, what would be the gross expense per patent for the period?

A. Seventy-eight dollars and thirty-six cents for the period; $20.90 per year.

Q. 303. You have already told us that the gross income per patent per year, was $35.87; is that right?

A. Yes, sir.

Q. 304. If you will deduct the gross expense per patent per year which you say is $20.90, that leaves you a net return per patent per year of how much?

A. Fourteen dollars and ninety-seven cents.

Q. 305. That does not, however, include the educational expense?

A. It does not.

Q. 306. The educational expense of $340,245.76, added to the proportionate general expense on patents of $385,438.08 gives you a gross expense of how much?

A. Seven hundred and twenty-five thousand six hundred and eighty-three dollars and eighty-four cents.

Q. 307. And divided over 4,919 patents, that would give you for the period a gross expense on each patent of how much?

A. One hundred and forty-seven dollars and fifty-two cents for the period and $39.34 for the year.

Q. 308. And the gross income per patent per year was $35.87. Now, if you deduct the gross income from the gross expense, it leaves you a deficit per patent per year of how much?

A. Three dollars and forty-seven cents is the deficit.

Q. 309. And your books do show that your deficit has run up into——

A. One hundred and forty-seven thousand six hundred and eighty-one dollars and twenty cents.

Q. 310. In compiling your figures have you made any allowance for the amortization of the patents?

A. We have not.

Q. 311. Have you allowed any interest on the investment?

A. We have not. We have never paid any interest on our capital.

Q. 312. Have you paid any dividends on your stock?

A. No, not a cent.

Q. 313. Either common or preferred?

A. No, sir.

Q. 314. Can you state how much is the total income which The Chemical Foundation has received upon licenses covering the so-called nitrogen patents?

A. Yes, sir.

Q. 315. Please state it.

A. Total up to date, up to December 31, 1922, on all nitrogen and allied patents, numbering 131, and including all those formerly owned by the Badische Company, was $2,600.

THE COURT: Those are the Haber patents?

THE WITNESS: The Haber patents.

MR. KRESEL: Yes, sir, $2,600. I now offer in evidence a statement showing the cost to The Chemical Foundation of all patents and other

properties acquired by it from the Alien Property Custodian, which shows the total of $271,850. This shows the date when paid and what it was paid for.

THE COURT: A summary?

MR. KRESEL: A summary, yes.

THE COURT: It is admitted.

MR. KRESEL: I ask that it be marked.

Received in evidence and marked "Defendant's Exhibit No. 92." (*See Exhibits, Vol. IV, page 2666.*)

MR. KRESEL: I now offer in evidence a summary statement of income and other receipts and disposition thereof, from April 10, 1919, to December 31, 1922.

Q. 316. Mr. Garvan, I had omitted to ask you whether that last exhibit was correct. I show you Defendant's Exhibit 92. Was that made up from your books and is that a correct statement?

A. It is.

Q. 317. I now show you this summary statement of the income and other receipts from the beginning to December 31, 1922. Is that a correct statement from your books?

A. It is.

MR. KRESEL: I will ask that they be marked.

Received in evidence and marked "Defendant's Exhibit No. 93." (*See Exhibits, Vol. IV, page 2667.*)

MR. KRESEL: From this exhibit, your Honor, it appears that the total income, total receipts of The Chemical Foundation, up to December 31, 1922, from all sources, including the proceeds from the sale of its capital stock, was $1,128,825.83. Then the statement shows the disposition thereof, namely, payment to the Alien Property

Custodian $271,850, expenses chargeable to the conduct of the company's affairs, not including educational work, $507,361.27, educational work, $340,245.76, making a total of $1,119,457.03 expended. That leaves liquid net assets $9,368.80 as of December 31, 1922.

I now offer in evidence a summary showing the yearly expiration of income producing patents and amounts earned thereon, with percentage for each year, to the total number of income producing patents, and total amounts earned.

THE COURT: Admitted.

Received in evidence and marked "Defendant's Exhibit No. 94." (*See Exhibits, Vol. IV, page 2668.*)

MR. KRESEL: I now offer in evidence a statement showing the earnings on the 874 trademarks acquired from the Alien Property Custodian, from April 10, 1919, to December 31, 1922. That is both a summary and a detailed statement.

MR. ANDERSON: If your Honor please, on the question of this statement here, the summary showing the expiration of income producing patents and the amounts earned thereon, just introduced as Defendant's Exhibit No. 94, I have not had a chance to look at it, so I move to strike it out on the ground that it is no evidence of any conditions in the future, that the only and the best evidence of the dates of expiration of patents is the record of the date of the patent itself.

MR. KRESEL: Which is in evidence by your own exhibit.

MR. ANDERSON: It is in evidence. This summary does not mean a single thing as to the future. I do not know what is to be argued from it.

MR. KRESEL: I do not think, Colonel, you

quite understand the exhibit. Please let me explain it.

MR. ANDERSON: I certainly do not understand it. If it has anything to do with this case I do not know it.

MR. KRESEL: Then you cannot really argue about it. Let me explain it. This exhibit takes up the 491 patents on which licenses were outstanding, shows how many of those patents will expire each year, and how the income thereon will thereby be reduced. That is what it shows.

MR. ANDERSON: Then there is another objection still. That is a pure estimate.

MR. KRESEL: Now you have your objection.

MR. ANDERSON: Yes, I thought it was for the past. Of course I notice that ran up to 1937, and it is an estimate pure and simple how the income will be reduced; because *non constat* they might have greatly increased income from those patents, or the income from the patents, on account of decreased use of the stuff produced under them or the introduction of some other substitute, might be greatly reduced in the meantime, so that they would be of no value two years from now. What can it prove?

THE COURT: All of which goes to show the very difficult task of attempting to place any value upon patents.

MR. ANDERSON: Undoubtedly, and we have had that difficult task before us. But this is not evidence.

THE COURT: This goes to make up evidence with respect to the future based upon the facts in the past.

MR. KRESEL: Based upon what we know of it now.

THE COURT: Based upon actual facts.

MR. KRESEL: Exactly.

THE COURT: I will receive it, Colonel Anderson.

MR. ANDERSON: In other words, here we start out with the statement that for the years 1919 to 1922 inclusive there was 9.67 per cent of the patents terminated and $115,470.77 in those years was the revenue derived from these patents that have terminated. Of course, the number of patents that would terminate during the years given is well known, because that is a matter of calculation merely from the dates of the patents. Then we calculate the revenue to be lost by those patents. We have had the past, present, and now we have the future of every known human activity to deal with in this evidence. Here is something that is a pure guess. If the Court is going to decide this case on evidence of that kind we might just as well not put in any evidence.

THE COURT: It seems to me that is the best evidence of value that we have had, Colonel.

MR. ANDERSON: Then I say it is pretty weak evidence of value all along the line, if your Honor please. If that is the ground on which we are going to decide value in the case, we need not put in any evidence, let us guess at it.

THE COURT: No, I do not think it is a guess. If we cannot determine the future yield of a patent from what it has done in the past I do not see how you can reach any conclusion as to its value, and it seems to me the very best possible evidence and the evidence I had rather been expecting would be shown by you, and which you did show so far as the Trade Commission was concerned, is what they had yielded. This is only a summary

and I could work out for myself, taking the date that the patent had expired, how much would be the expected yield, taking the life of those patents, and how much it would diminish if there was no change in the situation. It seems to me you have done the same thing generally, except that you have not carried it to the same conclusion with respect to the Trade Commission patents. These patents will yield so much money if nothing happens to vary its income during its life.

MR. ANDERSON: The patents that have been licensed will yield so much money provided the present ratio is continued and there is no increase or decrease in the amount of production under those patents. When they expire, of course, assuming the same ratio of production is maintained at that time as today, there will be an added loss of revenue.

THE COURT: With one provision, namely, that there is no change in the situation, this shows the future income.

MR. ANDERSON: Of course I do not want to argue the question, I just want to note my objection.

THE COURT: It goes to the weight of the testimony in any event.

MR. ANDERSON: Very well, sir.

THE COURT: And it seems to me it has some merit as a compilation by counsel or the witness.

MR. ANDERSON: It may help us in arguing the case, but that is all it can do.

THE COURT: Do you want to go on, Mr. Kresel?

MR. KRESEL: There is a question left unanswered. I will do anything your Honor desires.

THE COURT: I have been hoping that you

would take up the extra hour. I wonder if we could take this additional hour in the future.

MR. KRESEL: I would be very glad to do it.

THE COURT: I do not want to place a burden on the defendant any more than I did on the plaintiff, but if you find that the additional hour does place too much of a burden on you I will take it off. Unless you do find it a burden I hope we may sit until four o'clock instead of three o'clock Eastern Standard time. We will adjourn court now until 8:30 o'clock tomorrow, Eastern Standard time.

(Whereupon, at 4:00 o'clock Eastern Standard time, adjournment was taken until tomorrow, July 3, 1923, at 8:30 o'clock A. M., Eastern Standard Time.)